

**KAUA'I PLANNING COMMISSION  
REGULAR MEETING  
June 23, 2015**

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Anderson at 9:12 a.m., at the Līhu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Chair Angela Anderson  
Vice Chair Sean Mahoney  
Mr. Louis Abrams  
Ms. Amy Mendonca  
Mr. Wayne Katayama  
Mr. Kimo Keawe

The following staff members were present: Planning Department – Michael Dahilig, Kaaina Hull, Leslie Takasaki, Jody Galinato, Dale Cua, Marisa Valenciano; Deputy County Attorney Jodi Higuchi-Sayegusa, Office of Boards and Commissions – Administrator Jay Furfaro, Commission Support Clerk Darcie Agaran

Discussion of the meeting, in effect, ensued:

**CALL TO ORDER**

Chair Anderson called the meeting to order at 9:12 a.m.

**ROLL CALL**

Chair Anderson: Roll call.

Planning Director Dahilig: Six (6) members present, Madam Chair.

Chair Anderson: Thank you.

**APPROVAL OF THE AGENDA**

Chair Anderson: And if we can have an approval of the agenda.

Mr. Dahilig: Madam Chair, the Department would recommend handling Items I.1. and I.2. first. These are items related to extension of time for an SMA Permit, as well as request to amend the PDU relating to Rice Camp. We would then recommend moving to a New Hearing and I apologize, I sent a crib sheet out to the Commissioners. Moving the New Hearing, to Item F.2.a.

only after those items on I.1. and I.2. Then move on to action on Item F.2.a. and then move into New Hearings...back to New Hearings on the remaining items relating to the homestay applications, and follow with action on each of those things. And again, I just want to caution the Commissioners to just please be aware of and cross-reference the actual TMK and Application Number, and the...versus looking at solely the tag number that's usually in the corner here. So just make sure that you're looking at the right application for today because we have a number of applications that are going through. Some of those numbers may not correspond and may be related to last meeting's tagging, so just be aware of what application we're on. And just to reiterate Madam Chair, we'd recommend going with again Items I.1. and I.2, New Hearings on Item F.2.a., action on Item F.2.a., then move to New Hearings on the remaining items, and then action on the remaining items afterwards.

Chair Anderson: Okay. Do I have a motion for...to approve the agenda with amendments as stated by the Commission Clerk?

Mr. Mahoney: Move to approve.

Ms. Mendonca: Second.

Chair Anderson: All those in favor? (Unanimous voice vote) Any discussion? (None) Any opposed? (None) Alright, motion carries 6:0.

### **MINUTES of the meeting(s) of the Planning Commission**

#### **Meeting of May 26, 2015**

Mr. Dahilig: Thank you, Madam Chair. We are now on Minutes of the Planning Commission for meeting of May 26, 2015.

Chair Anderson: Do I have a motion to approve the minutes for May 26, 2015?

Mr. Mahoney: Move to approve.

Mr. Abrams: Second.

Chair Anderson: Any discussion? (None) All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 6:0.

### **RECEIPT OF ITEMS FOR THE RECORD**

Mr. Dahilig: Thank you, Madam Chair. We're on Item E, Receipt of Items for the Record. We have passed out a pretty thick set of testimony that was provided prior to the meeting, and it's listed as...it's been provided in this packet here just for clarification for the Commissioners, so we ask that this testimony be also received for the record this morning.

Chair Anderson: Do I have a motion to receive the items for the record?

Mr. Keawe: So moved.

Ms. Mendonca: Second.

Chair Anderson: Okay. All those in favor? (Unanimous voice vote) Any opposed? (None)  
Motion carries 6:0.

### **GENERAL BUSINESS MATTERS**

Extension of Time for Special Management Area Use Permit SMA(U)-2014-6, Tax Map Key (4) 2-6-006: 021 = Tom Stirling.

Mr. Dahilig: Thank you, Madam Chair. Let's move to Item I.1., which is the General Business Matter extension of time for Special Management Area Use Permit SMA(U)-2014-6, at Tax Map Key (4) 2-6-006 parcel 21. Applicant here is Tom Stirling and there is a Director's Report for this matter. Jody Galinato is our Planner for this particular item and she'll make the presentation.

Staff Planner Jody Galinato: Good Morning. Do you want me to read the whole report in light of the time or...?

Chair Anderson: Please summarize.

Ms. Galinato: Okay. This was an SMA Permit that was approved June 24, 2014, and it had a timeline to commence construction within one (1) year and complete construction within two (2) years. The delay has been attributed to resolving the requirements imposed by the Department of Health regarding the setback for the septic tank. The...I'm sorry. The Applicant has demonstrated good faith in complying with the requirements of the SMA Use Permit. Since the Building Permit is being processed, it would be the Department's preference to grant a six (6) month extension to obtain building permit approval and allowing eighteen (18) months to complete the construction. Therefore, approving the extension request would allow a total of three (3) years to complete the project from the Planning Commission's SMA Permit approval in 2014. The Department considers the time given to complete the project is sufficient. If the Applicant is unable to comply with the amended timeline and therefore requests another time extension, the Applicant will be advised that any new laws, ordinances, or regulations that have been implemented within this timeframe may be applicable to the project. The recommendation...I'll hold off until after the Applicant has spoken.

Chair Anderson: Does the Commission have any questions for the Planner at this time?

Mr. Katayama: I do. Hi, good morning Jody. Specifically, what is the issue between the Department of Health and the Applicant?

Ms. Galinato: They were trying to fit the...this was approved under the old shoreline setback and they're trying to fit the septic in a leach field outside of the setback. Am I correct?

Avery Youn: Close.

Ms. Galinato: Okay.

Chair Anderson: Alright. I see that we have the applicant here. Does the Applicant have any comments regarding the Director's Report or any requests?

Mr. Youn: Yes, I do. My name is Avery Youn. I'm the authorized agent. The problem started when the Planning Department required that road right-of-way reserve be established in the front, which took away seven (7) feet of which the leach field could probably be placed in there. But it didn't have enough room once the roadway right-of-way was established, so we had no alternative but to move it between the residence and the shoreline, then we ran into trouble with the shoreline setback. There was this new septic system that we tried to get approval for which required a seepage pit, or like a cesspool, that the septic tank would feed into. It took about a year in negotiating with the Department of Health, only to find out that at the end they will not approve it and that's why we're back here. This application has been with the Planning Department for over a year now. We finally got it resolved and we have a few more agencies to go through to get to Building Permit, but that triggered the problem; the location of the leach field and it could not go in the shoreline setback, so we had to look at alternatives.

I think the final solution is a seepage pit on the side of the house, which we barely had enough room for. To get the seepage pit, we needed to get a variance from the Department of Health and we finally got it, I believe last week.

On the issue of only having six (6) months left to get a Building Permit, I think...if any of you are familiar with building permit processes, it may take longer than that. So we were hoping that we'd have at least a year just to get the Building Permit done. As far as the eighteen (18) months to begin construction, that's fine, but we don't know what else might happen because it's so close to the shoreline. Because of the new shoreline setback ordinance, it created some glitches in the process and we're only through two (2) agencies so far; we've got five (5) more to go. So if at all possible, because we've been in the permit process for over a year now and we have only six (6) months... It could probably be done if everything is met today with the Planning Department requirements and we could get it signed off within the next few days, then we could probably be alright in getting the permit within the next six (6) months with the other agencies. But if we're going to run into any more glitches, it would be preferable if a year to get a Building Permit would be allowable. And like I said earlier, the eighteen (18) months to begin construction...once we get the permit to begin construction immediately after that should not be a problem. And that's my only comment.

Chair Anderson: Okay. Does the Commission have any questions for the Applicant?

Ms. Mendonca: I have one. Avery, good morning.

Mr. Youn: Good morning.

Ms. Mendonca: This ADU is being built above the existing residence right now as I understand it, correct?

Mr. Youn: That's correct.

Ms. Mendonca: What type of...was there already a septic tank there for the existing residence?

Mr. Youn: Cesspool only.

Ms. Mendonca: Oh, okay. So you had to remove or fill that cesspool and go with the septic?

Mr. Youn: I believe the Department of Health will allow us to use that cesspool as a seepage pit, provided we put in a septic tank. There is no septic tank now.

Ms. Mendonca: And that's what you're putting in now?

Mr. Youn: Yes. Previous to that, it required a leach field and the only location on the side that had enough land area would've been within the shoreline setback. But because this lot is so narrow, it became subject to the new shoreline setback ordinance, which wouldn't allow it. So that's why we had to go through the various procedures through the Department of Health.

Chair Anderson: Okay. Any other questions?

Mr. Abrams: I think I cleared it up. We're still within the SMA Permit regulation in regards to the total two (2) years. Is that what you're proposing? Or does this take us over it?

Ms. Galinato: The total is three (3) years; one (1) year to commence, two (2) years to complete.

Mr. Abrams: And an SMA Permit is good for...?

Ms. Galinato: For the three (3) years. They just haven't commenced within the one (1) year.

Mr. Abrams: Okay.

Mr. Dahilig: I think you're referring to what is the default requirement in the rules that it goes to two (2) years unless otherwise stated in the conditions of approval.

Mr. Abrams: Okay. Thank you.

Chair Anderson: Okay.

Mr. Dahilig: And Madam Chair, just for the record, we wouldn't have any objections should the Commission wish to revise our recommendation to go up to a year per the Applicant's request.



Chair Anderson: Okay. Given the fact that we've amended the agenda, I'd like to provide time at this time for the public to give comments. If anyone in the public would like to give testimony at this time on this agenda matter, please step forward.

Okay, seeing none. Do I have a motion? Or actually if we can have the Planner go ahead and read your recommendations.

Ms. Galinato: It is recommended that the Commission approve the extension of time to allow the Applicant additional time to commence the construction of the project and that Condition 9 be amended to read as follows: The Applicant shall obtain the necessary Building Permit and commence construction within eighteen (18) months from the date of approval of this permit, and complete construction by June 26, 2017. And that would be with the six (6) months that we previously recommended. We can amend it to twenty-four (24) months if that's your wish.

Chair Anderson: Okay. If you can clarify, I know that the Clerk has...or the Director has stated that there's no opposition from the Department regarding the change in timeframe, but for that recommendation, can you read it with the amended...amendment of adding the six (6) months? Just so it's clear for the Commission.

Ms. Galinato: Sure. Condition No. 9 would be amended to: The Applicant shall obtain the necessary building permit and commence construction within twenty-four (24) months from the date of approval of this permit, and complete construction by...

Mr. Dahilig: December.

Ms. Galinato: December 26, 2017. And furthermore, the Applicant is advised that all applicable conditions of the approval shall remain in effect. Should the Applicant be unable to comply with the development timeline in Condition No. 9 and requests another extension of time, the Applicant is advised that any new laws, ordinances, or regulations that have been implemented within this timeframe may be applicable to the project.

Chair Anderson: Okay. Do I have a motion from any of the...well first of all, is there any questions for the Planner regarding the recommendations?

Okay, so do I have a motion from the Commission regarding this application?

Ms. Mendonca: Madam Chair, given the circumstances as Youn explained, I so move to accept the Planner's change and the amendment to the recommendation.

Mr. Dahilig: I guess, quickly, June or December?

Ms. Mendonca: I'm sorry.

Mr. Dahilig: June or December?

Ms. Mendonca: December.

Mr. Dahilig: December, okay.

Mr. Mahoney: Second.

Chair Anderson: Okay, any discussion? Okay, seeing none. All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 6:0.

Request to Amend Project Development Use Permit PDU-2014-6 and Class IV Zoning Permit Z-IV-2014-6 to increase the overall density of Phase II of the project from 84 to 90 units, further identified as Tax Map Keys: 3-6-004: 009 and 3-6-009: 001, Līhu'e = Rice Camp Partners, LP.

Mr. Dahilig: Thank you, Madam Chair. We are now on Item I.2., request to amend Project Development Use Permit PDU-2014-6 and Class IV Zoning Permit Z-IV-2014-6 to increase the overall density of Phase II of the project from 84 to 90 units, further identified as Tax Map Key: 3-6-004 parcel 9 and 3-6-009 parcel 1, Līhu'e. The applicant is Rice Camp Partners, LP. Dale Cua's handling this particular matter.

Staff Planner Dale Cua: Good morning Madam Chair, members of the Commission. I'll go ahead and just summarize the Director's Report for you. The action that's being requested is the Applicant is looking to modify and increase the overall density for Phase II of the project. The density increase would be from a total of 84 to 90 units.

A little bit of background on the project. On December 10, 2013, Planning Commission approved the subject permits to allow development of a senior affordable housing project and to construct the project into two (2) phases; Phase I allowed the construction and operation of a sixty (60) unit affordable housing project for senior citizens, Phase II involves the construction of twenty-four (24) rental units. Project is comprised of six (6) one-story 6-plex buildings and a single two-story building. Each 6-plex will include four (4) one (1) bedroom units and two (2) two (2) bedroom units. The two-story building will include an elevator, fourteen (14) one (1) bedroom units and ten (10) two (2) bedroom units. Additionally, a community center and two (2) separate laundry buildings are being proposed. The community center would house the management office and a central mail center.

As represented in the Applicant's correspondence, they are seeking to amend the foregoing permits to increase the overall density of their project from 84 to 90 units.

Just moving on to the conclusion of the report. Based on the foregoing findings and evaluation, it is hereby concluded that the request to amend the overall density of the project may be considered and the increase in density is compatible with the surrounding uses.

The Department's recommendation, based on the foregoing evaluation and conclusion, it is hereby recommended that the subject request to amend the overall density of the project from 84 to 90 units be approved. And that concludes the Department's...Director's Report.

Chair Anderson: Thank you. Does the Commission have any questions for the Planner at this time?

Okay, seeing none. Is the applicant here?

Makani Maeva: Good morning Chair Anderson and members of the Planning Commission. My name is Makani Maeva and I'm the representative for Rice Camp Partners, LP. I'm here to answer any questions that you may have about our request.

Chair Anderson: Do you have any comments on the Director's Report or anything additional to note?

Ms. Maeva: The only thing I might say is that the sixty (60) units of affordable housing that we completed in February and in April of this year were 100% occupied within the first month. So there's a pent up demand for this type of affordable housing here in Downtown Līhu'e. Our intent is to use the vacant parcel that we did not have water facilities for when we originally began construction, and to build the additional units on that vacant parcel. We are planning to use the same local contractor, the same architectural (sic); we'll use the same non-profit and manager. So we anticipate that we'll be able to fill it up right away. And the units would be rented to kupuna making less than 50% of the area median income. I should also say that the land is leased from the County of Kaua'i as an affordable housing project for the next sixty-five (65) years.

Chair Anderson: Thank you. Does the Commission have any questions for the Applicant?

Hearing none, okay. Again, as was done in the previous agenda item, if there's anyone in the public that would like to give testimony on this matter, please come forward.

Okay, noting that there's no public testimony at this time on this matter. What would the Commission like to do?

Mr. Mahoney: Madam Chair, move to approve.

Mr. Keawe: Second.

Chair Anderson: Okay. All those in favor? (Unanimous voice vote) Any opposed? (None) Okay, motion carries 6:0.

Ms. Maeva: Thank you very much.

Chair Anderson: Thank you.

## **HEARINGS AND PUBLIC COMMENT**



Continued Agency Hearing (None)

New Agency Hearing

Class IV Zoning Permit Z-IV-2015-31 and Use Permit U-2015-30 to allow construction of a farmworker housing unit featuring 2 bedrooms/2 bathrooms and office space on a parcel located along the makai side of Koolau Road in Moloa'a, situated approx. ½-mile east of its intersection with Kūhiō Highway, further identified as 6020 Koolau Road, Tax Map Key 4-9-009: 012, CPR Unit 43 and affecting an area approx. 2.564 acres of a larger parcel = John & May Outzen.

Mr. Dahilig: Thank you, Madam Chair. We are now on the New Hearing for Item...the New Agency Hearing under Item F.2.a., Class IV Zoning Permit Z-IV-2015-31 and Use Permit U-2015-30 to allow construction of a farmworker housing unit featuring two (2) bedrooms, two (2) baths, and office space on a parcel located along the makai side of Koolau Road in Moloa'a situated approximately ½-mile east of its intersection with Kūhiō Highway, further identified as 6020 Koolau Road at Tax Map Key 4-9-009 parcel 12, CPR Unit 43 and affecting approximately 2.564 acres of a larger parcel. John and May Outzen are the applicants for this particular matter. Madam Chair, the Department would recommend opening the agency hearing at this time.

Chair Anderson: Is there anyone in the public that would like to give testimony on this agenda item?

Okay, seeing none.

Mr. Dahilig: Madam Chair, we do not have anybody signed up for this particular matter. Given the lack of members signed up and the lack of people willing to testify on this item, the Department would recommend closure of the agency hearing at this time.

Chair Anderson: Okay, do I have a motion to close the agency hearing?

Mr. Mahoney: Move to close the hearing.

Mr. Abrams: Second.

Chair Anderson: Any discussion? (None) All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 6:0.

**NEW BUSINESS**

Class IV Zoning Permit Z-IV-2015-31 and Use Permit U-2015-30 to allow construction of a farmworker housing unit featuring 2 bedrooms/2 bathrooms and office space on a parcel located along the makai side of Koolau Road in Moloa'a, situated approx. ½-mile east of its intersection with Kūhiō Highway, further identified as 6020 Koolau Road, Tax Map Key 4-9-

009: 012, CPR Unit 43 and affecting an area approx. 2.564 acres of a larger parcel = John & May Outzen.

Mr. Dahilig: Thank you, Madam Chair. We would like to move actually onto action on this particular item and I'd like to turn it over to Dale for his report.

Mr. Cua: Thank you, Madam Chair. I'll just do a quick summary of the report. The subject project is located in Moloka'a. It's situated within a CPR Unit 90 of the Moloka'a Hui Phase I Condominium. Pursuant to Chapter 8-2.4 of the Kaua'i County Code, the construction and use of a farmworker housing requires a Use Permit when the proposed is situated within the Agriculture Zoning District and a Class IV Zoning Permit is a procedural requirement when obtaining a Use Permit within the Agriculture Zoning District.

As stated in the application, the Applicant is proposing to construct a farmworker housing structure approximately 1,200 square feet in size, containing two (2) bedrooms, one (1) office space, and two (2) baths. The proposed structure will be utilized by members of the Outzen family who run the current farming operation. A little bit of property information. The project site involves CPR Unit 90 of the Moloka'a Hui Phase I Condominium and has an area of 2.654 acres. This CPR Unit is one of many others within a portion of a 281-acre parcel.

On April 23, 1998, Planning Commission approved Variance Permit V-97-6 and Class IV Zoning Permit Z-IV-97-29 to allow deviation from the one-time subdivision limitation within the Agriculture Zoning District. The Commission approved a reconsolidation of twenty-two (22) lots into two (2) lots; Lot 1 is approximately 592 acres, Lot 2 is approximately 132 acres. On Lot 1, the subject parcel, was originally represented to have only nine (9) dwellings to be utilized solely by those engaged in farming activities on Lot 1 and their respective families.

The surrounding properties are agricultural in nature with related uses. West of the subject parcel are agriculture lands that are either vacant or in agricultural or residential use. One of the western bordering properties has a commercial fruit/snack stand operation. East of the property is the ocean. Properties to the north and south of the parcel contain agriculture lands that are either fallow or in agricultural and residential use.

I'm going to move on to the conclusion of the report and then I'll hold off on the recommendation after public testimony.

Chair Anderson: Okay.

Mr. Cua: So preliminary conclusion. Based on the foregoing findings and evaluation, it is hereby concluded that the proposed construction and use of a farmworker housing structure should be compatible with other uses on the property. The use should not be detrimental to persons, property, or the environment in the surrounding area. The Applicant should institute the "Best Management Practices" to insure that operation of this facility does not generate impacts that may affect the health, safety, and welfare of those in the surrounding area of the proposal. And that concludes the Department's Report for now.

Chair Anderson: Okay. Does the Commission have any questions for the Planner?

Yes.

Mr. Katayama: Hi, Dale. When was the last farm plan submitted for this property?

Mr. Cua: For this particular parcel, there was a...not a complete farm plan, but they show areas of the property that was utilized in farming.

Mr. Katayama: So what is the agricultural activity on this property?

Mr. Cua: They have a mixture of uses that I understand, but maybe I'll have the Applicant explain to you folks what agricultural operations occur on the property.

Mr. Katayama: Okay, thank you.

Chair Anderson: Okay. Any other questions for the Planner?

Okay, is the Applicant here? If you can please approach, and please state your name for the record.

John Outzen: John Outzen.

Chair Anderson: Thank you. And do you have any...going first to the Director's Report...any comments or additional statements that you'd like to make?

Mr. Outzen: Well, we have...do you want to know what we're farming on that property? We have sixty-five (65) longan trees on there right now that we've been farming for the last ten (10) years. They are twenty (20) year old trees, so they produce a lot of longan and we've developed a good market here in the last ten (10) years. We live in Hā'ena right now. It's hard to farm that property from Hā'ena, so we're hoping we can move out there and farm it full-time; that's our goal, to live there and farm that full-time.

Mr. Keawe: You're talking about also members of your family moving there?

Mr. Outzen: Right, right. I have three (3) sons.

Mr. Keawe: Three (3) sons, right?

Mr. Outzen: Yeah.

Mr. Keawe: So they're the farmworkers?

Mr. Outzen: Pardon?

Mr. Keawe: They are the farmworkers?

Mr. Outzen: They are the farmworkers right now, yeah.

Chair Anderson: Any other questions for the Applicant?

Mr. Katayama: Madam Chair.

Chair Anderson: Yes.

Mr. Katayama: Is that the extent of your agricultural development plans?

Mr. Outzen: No. Once we get to live there, we're going to have other different kinds of fruit trees and other crops we're going to plant there. We'll have diversified and it's going to be utilized every inch of that property to grow everything we can, basically.

Mr. Katayama: I guess it's more a question to the Department. As we have applications for farmworker housing, as part of the criteria, would the Department be asking for an update on their farm plan?

Mr. Dahilig: I think the interface with this particular type...even though it's couched as a Use Permit, a lot of it is also incumbent on the statutory requirements that are folded in along with the use on the property. So the threshold of whatever they sell is really more so what we look at in this particular case versus you know the type of farming that goes on. The law allowing this type of, I guess you would call temporary dwelling unit, is really more so permissively couched in the value of the crops that they sell as reported on their Schedule F versus whether or not they have a sustainable ag plan or not. I don't know if Dale wants to comment on the...further.

Mr. Katayama: I guess that's the center of the issue that needs to be identified is that is the value of the investment, a rational investment given the activity, and if the focus on, in this case is agricultural activity, if you are making an investment in dwellings or tractors or whatever it is, new plantings, does that make sense for that activity?

Mr. Dahilig: I think that...in some respect, that's a business decision.

Mr. Katayama: Well, it becomes a use decision because here, I think wisely so, the County has allowed a very special dispensation for certain activity which would make a needed resource for agriculture activity available in a very special situation in support of that agriculture activity. Now if you're making an investment, and everyone has a right to make an investment, does it make sense based on the activity or is it really something else?

Mr. Dahilig: And the reason why I guess I would couch that as a business...I would say that it's a business decision, it's a business decision based off of the way the law is set up and whether the Applicant wants to bear the risk that he/she, or whatever entity it may be, may not meet the annual \$35,000 threshold. So they bear the risk that their unit essentially may not be allowable if they're not yielding the statutory required \$35,000 a year in agricultural sales. So whether they want to make that upfront investment or not I think is their risk to bear. But from an analysis

standpoint, at least from the Department, they've submitted the paperwork pursuant to the ordinance to prove that their Schedule F's and their tax forms do show that they've gone above and beyond the threshold as set by the Council, which makes them in its essence eligible for this special program.

Mr. Katayama: So if left unfettered, how does this not become a way of circumventing housing development in ag-zoned land?

Mr. Dahilig: And I think that's where the question then comes in for us to...how do we enforce the program? Essentially is the question I would see it as, and so the annual recertification...this is only, I believe, the third application that has come through.

Mr. Cua: Second.

Mr. Dahilig: Second one, second application that has come through, so from a programmatic standpoint it's...this has proven that the thresholds as set by the Council do...do deter a large amount of these applications from coming in. This is an extraordinary threshold that is set. So from an enforcement standpoint, we can easily monitor at this point given the amount of homestay...oh, I'm sorry, homestay. We're on homestays today, but the amount of farmworker housing units that we actually have on our books and if approved, this would be our second one. The first one I believe was the Wooten's that came in.

Mr. Cua: Yeah.

Mr. Katayama: I think, you know, the path that the Department is going on in becoming an enforcement agency relative to its other duties, in terms of planning for the development of the community for the island, as well as sort of monitoring the growth of the island, I would view the enforcement portion of the least desirable path to proceed under. And again, I think the ordinance is a wise one, I think it's a good one. I'm just cautious that investment decisions can be made on a lot of different assumptions, business assumptions. And I just want to be assured by the Applicant, in this case, that it is an agricultural business assumption that's moving this decision as opposed to a developmental issue. I know that under farm dwelling, the structure needs to be completely removed once they do not demonstrate the threshold, but \$35,000 is a very modest threshold for the investment. I mean for a \$1,500...1,500 square foot home...let's say if you use \$20 a square foot, which is a very, very modest development cost, I mean what is the rate of return on that investment versus a tractor or a processing plant or even a fruit stand? So I mean, again, I think those elements, if embedded in a farming plan, ag plan, would go in a large way supporting these kinds of incremental decisions.

Mr. Dahilig: I have no disagreement with that.

Chair Anderson: Okay, any further questions for the Applicant or for the Department from the Commission?

Ms. Mendonca: I have one for Dale. What is the total acreage that you're basing your recommendation on?



Mr. Cua: The recommendation is just limited to the CPR Unit that the Outzen's own. It's not...it doesn't apply to the entire Moloka'a Hui Condo.

Ms. Mendonca: Okay. So he...is he farming one (1) acre of land in vegetable production?

Mr. Cua: Well, if you go back to the report, his CPR Unit is a little over 2.5 acres.

Ms. Mendonca: And that's where he plans to build a house?

Mr. Cua: Yeah.

Ms. Mendonca: But the entire use of his farming activity totals out to how many acres?

Mr. Cua: From what I understand, he's looking to utilize his entire 2.5 acre piece.

Ms. Mendonca: Well, you say there's currently one (1) acre of land in intensive vegetable production, and remaining five (5) acres are intensive fruit tree production. He said he has sixty-five (65) trees, lychee trees, I'm just curious how do you fit sixty-five (65) trees on two (2) acres of land?

Would that be an error?

Mr. Cua: If you go back to his exhibits in his application, you can refer to page 15 where he outlines what his proposal would entail. He has an area designated for his future vegetable garden to be worked around his existing longan trees. I mean, granted that his exhibits is not to scale, per se, but I think the intent is to expand his agricultural operations.

Ms. Mendonca: So the five (5) acres in intensive fruit trees right now, that's not correct?

Chair Anderson: Perhaps if the Commissioner can address the Applicant, you can clarify the total acreage.

Ms. Mendonca: Yeah, I just thought maybe that was a misprint?

Mr. Outzen: Yeah, I would be happy to. It's over 2.5 acres. It easily fits sixty-five (65) trees on there, fruit trees. They're twenty (20) year old trees and there's still room for more crops, a garden, and a house on there. It doesn't sound like it's that big, but if you actually see how big that piece of property is, you'd be amazed. There's actually over sixty-five (65) trees on there, but we have sixty-five (65) trees that are producing, you know, at least 500 pounds of longan a year, so.

Chair Anderson: Are there any further questions?

Mr. Abrams: Yes. Dale, this CPR Unit, does it allow an ag farm dwelling there now?

Mr. Cua: No.

Mr. Abrams: It does not?

Mr. Cua: No. This is one of many CPR Units that weren't designated to have density. In the original proposal, a total of nine (9) was allotted for the entire Moloa'a Hui. There was amendment made to increase it to thirteen (13). With this new farmworker housing ordinance, it allowed opportunities for legitimate farmers to apply for farmworker housing through a Use Permit.

Mr. Abrams: Okay, thank you.

Chair Anderson: Any other questions?

Alright, if we can have the Planner please read your recommendations.

Mr. Cua: Moving on to the recommendation. Based on the foregoing evaluation and conclusion, it is hereby recommended that the subject request to construct and use a farmworker housing structure under Use Permit U-2015-30 and Class IV Zoning Permit Z-IV-2015-31 be approved with the following conditions: (1) the farmworker housing structure shall be constructed and operated as represented. Any changes to the operation and/or the respective structures shall be reviewed by the Department to determine whether Planning Commission review and approval is required. (2) The commercial farm at the subject site for which the farmworker housing unit operates in conjunction with shall maintain gross annual sales of agricultural products of at least \$35,000. (3) The commercial farm at the subject site for which the farmworker housing unit operates in conjunction with shall remain dedicated to agricultural use pursuant to Section 5A-9.1 of the Kaua'i County Code. (4) The farmworker housing unit shall be used exclusively for housing of farmworkers and their immediate family. (§a) Pursuant to Section 8-7.9 of the Kaua'i County Code, as amended, "farmworker" is a farm owner, employee, contract worker or unpaid intern in a program that qualifies under the Fair Labor Standards Act who works no less than nineteen (19) hours per week in farm-related operations on a commercial farm. For the purposes of a farmworker housing, a commercial farm owner may qualify as a farmworker only when he can demonstrate the following: (i) That the proposed farmworker housing will be the farm owner's exclusive residence and (ii) that the affected lot has been subject to a condominium property regime (CPR) and that the respective CPR unit does not qualify for any allowable permanent density. Condition 5, total floor area of the farmworker housing structure shall not exceed 1,200 square feet of floor area. For the purposes of farmworker housing, the total floor area shall mean the sum of the horizontal areas of each floor of a building, measured from the interior faces of the exterior walls. The total floor area shall include enclosed attached accessory structures such as garages or storage areas, but it shall exclude unenclosed attached structures such as breezeways, lanais, or porches. (6) The structure shall have a post and pier foundation. No concrete slabs shall be used in constructing of the farmworker housing. (7) The owner or lessee of the property shall not charge the farmworker or their immediate family members for rent or electricity. (8) The land upon which the farmworker housing is located shall not be subdivided to create separate lots for farmworker housing and the commercial farm. (9) The subject permits shall be subject to revocation if the farmworker housing and the commercial farm

are designated as limited common elements of separate condominium units. (10) The owner of the farmworker housing unit shall annually certify to the Director of Planning that the respective farmworker housing units meet the requirements of the Kaua'i County Code, Section 8-8.6, as amended, and that they meet the subject permits' conditions of approval. (11) If any interest in the property that is subject to the Use Permit is transferred, conveyed, or sold, the successor in interest shall immediately notify the Director of Planning of such change in ownership. (12) Prior to the issuance of a Building Permit, the Applicant shall demonstrate to the satisfaction of the Planning Director that the Applicant has recorded in the Bureau of Conveyances or Land Court, as the case may be, the requirements and conditions set forth under the subject permits, and under Section 8-8.6 of the Kaua'i County Code. (13) In order to minimize adverse impacts to the Federally Listed Threatened Species, Newell's Shearwaters or other seabirds, all external lighting shall be only of the following types: downward-facing shielded lights. Spotlights aimed upward or spotlighting of structures, landscaping, or the ocean shall be prohibited. (14) The Applicant is advised that should any archaeological or historical resources be discovered during the ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the Applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures. (15) To the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kaua'i contractors as long as they are qualified and reasonably competitive with the other contractors, and shall seek to employ residents of Kaua'i in temporary construction and permanent jobs. It is recognized that the Applicant may have to employ non-Kaua'i residents for particular skilled jobs where no qualified Kaua'i resident possesses such skills. For the purposes of this condition, the Commission shall relieve the Applicant of this requirement if the Applicant is subjected to anti-competitive restraints on trade or other monopolistic practices. (16) The Applicant shall implement to the extent possible sustainable building techniques and operational methods for the project, such as Leadership in Energy and Environmental Design standards or another comparable state-approved, nationally recognized, and consensus-based guideline, standard, or system, and strategies, which may include but is not limited to recycling, natural lighting, extensive landscaping, solar panels, low-energy fixtures, low-energy lighting and other similar methods and techniques. All such proposals shall be reflected on the plans submitted for Building Permit review. (17) Prior to Building Permit application, the Applicant shall resolve to the satisfaction of the Water Department and Public Works Department, as well as any other applicable agencies, said agencies' concerns as referenced to and noted herein under the subject permits. Any revisions shall be identified accordingly on the final site development plan and building construction plans for Building Permit review and processing. (18) The Applicant is advised that prior to and/or use, additional government condition...government agency conditions may be imposed. It shall be the Applicant's responsibility to resolve those conditions with the respective agencies. And finally, the Planning Commission... (19) The Planning Commission reserves the right to add or delete conditions of approval in order to address or mitigate unforeseen impacts this project may create, or revoke the permits through proper procedures should conditions of approval be violated or adverse impacts be created that cannot be properly addressed. And that concludes the conditions of the permit.

At 9:56 a.m., Commissioner Keawe stepped out of the meeting.

Chair Anderson: Does the Applicant agree with the recommendations and the conditions as set forth by the Department?

Mr. Outzen: Yes, I do.

Chair Anderson: Okay. Do I have a motion from the Commission?

Mr. Abrams: Move to approve Staff's recommendation.

Mr. Mahoney: Second.

Chair Anderson: Okay, any discussion?

Ms. Mendonca: Could I ask Dale one (1) question? Is it...?

Chair Anderson: Yeah.

Ms. Mendonca: Dale, this building is being built for the workers and according to Mr. Stirling (sic), their...your sons work with you?

At 9:58 a.m., Commissioner Keawe returned to the meeting.

Mr. Outzen: Yes.

Ms. Mendonca: So the...they do not have any other jobs except to work with you on the farm?

Mr. Outzen: No, they have jobs, but they come and work part-time with me.

Ms. Mendonca: Okay. No other questions.

Chair Anderson: Alright, any further discussion? (None) Okay, all those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 6:0. Thank you.

Mr. Outzen: Thank you, thank you very much.

## **HEARINGS AND PUBLIC COMMENT (Continued)**

### **New Agency Hearing (Continued)**

Class IV Zoning Permit Z-IV-2015-15, Use Permit U-2015-14 to allow conversion of an existing residence into a bed and breakfast operation on a parcel located along the western side of Kuamoo Road in Wailua Homesteads, situated within the Wailua Terrace Subdivision and approx. 125 ft. south of the Ohelo Road/Kuamoo Road intersection, further identified as 5663 Ohelo Road, Tax Map Key 4-2-009: 011, and containing a total area of 18,739 sq. ft. = Mohala Ke Ola Management, LLC.



Mr. Dahilig: Thank you, Madam Chair. I guess...let's move on to the New Agency Hearings for the homestay applications starting with F.2.b., Class IV Zoning Permit Z-IV-2015-15, Use Permit U-2015-14 to allow conversion of an existing residence to a bed and breakfast operation on a parcel located along the western side of Kuamoo Road in Wailua Homesteads, situated along the Wailua Terrace Subdivision, approximately 125 feet south of the Ohelo Road/Kuamoo Road intersection, further identified as 5663 Ohelo Road, Tax Map Key 4-2-009 parcel 11, and containing a total area of 18,739 square feet. The applicant here is Mohala Ke Ola Management, LLC. There is a Supplemental Director's Report to this matter. Madam Chair, we also have written testimony from...I guess...Huber and Lois Graham, we have Talbert Tacbian in opposition, Phil and Cosie Tacbian in opposition, Tina Sakamoto in opposition, and a letter from Andrew Kass. And Madam Chair, I do have four (4) individuals that are signed up to testify on this particular item. At this time, we'd recommend opening the agency hearing for this matter.

Chair Anderson: Okay.

Jonathan Chun: If I may, Madam Chair and Mr...Madam Chair, I...just out of observation on the agenda items, there are numerous items on the agenda on F.2. Most of them are recommending denial, there are two (2) in which my clients have submitted that are recommended for approval. I would suggest perhaps to move the items that are recommended for approval to...you can hear those first so that they can be finished and then move on to the Contested Case items. Just a suggestion.

Chair Anderson: Okay. We'll...okay, so we're just starting the Agency Hearing and this is for Mohala Ke Ola Management, LLC. There is, I believe, four (4) people who have signed up to testify on this matter. If we can read the first person.

Mr. Dahilig: Okay. Amy Hicks, followed by Shelly Sikkema, followed by Andy Kass.

Amy Hicks? Amy Hicks? Shelly Sikkema.

Shelly Sikkema: I'm reading this for Brianna Burgard since she's off the island. So I'll be...my name's Shelly Sikkema, but I will be reading it for her. My name is Shelly Sikkema.

To the Planning Commission on the County of Kaua'i, my name is Brianna Burgard. I'm off island at the time of this hearing and have requested my testimony be read. I am the long-term tenant for over 1 ½ years at 5663 Ohelo Road, Kapa'a; also referred to as the ADU Unit on the property. I have lived there for over a year and a half, and have witnessed the running of the B&B on this property. There has never been an issue with any noise level, and I actually live twenty (20) feet from the front door. We say good night to one another, just like the Walton's. Parking has never been an issue, and the guests and I always park inside the property. I have been in the house daily, actually. The Summer family treats me and the guests as their own family. I call their children my "peanuts". I have thoroughly enjoyed having the guests on the property and have made many friends. There appears recently to be some confusion with the Planning Department as to whether the owner, Darcy Summer, lives on the property because it was in an LLC. I can most certainly testify that she does and even prior to me renting the ADU,



I have been on the property visiting the family many times. They take great pride in their B&B, and it is a family-run operation. The "peanuts" even chip in and help out when they can, in between school, dance, piano, guitar, sailing, and voice lessons. I am in full support of this B&B being granted their permit. I hope I am able to enjoy many more years on this property experiencing a family-run operation, and meeting many new friends from all over the world. Sincerely, Brianna Burgard.

Chair Anderson: Thank you.

Mr. Dahilig: Andy Kass, followed by Carl Imparato.

Andrew Kass: Aloha members of the Planning Commission, Chair Anderson. My name is Andrew Kass. I submitted written testimony in this case as well, but I wanted to come here and speak my word as well. I am in favor of this application.

I understand the need of the Planning Commission to regulate homestays and B&Bs and TVRs, and...but it's been my experience that this is a genuine B&B with a family living there and running it themselves. Coincidentally, when I moved here in 2003, I met somebody who invited me to a party; it turned out to be at this B&B. So at the time, over twelve (12) years ago, it was being run as a B&B by a person who hosted a...also friends and relatives over. So it's not like a new operation, it's not a conversion of a regular residence into a B&B; it's a property that's been run as a B&B for many, many years now.

Fast forward to last year when I met Darcy and her family, and you know, they've invited me over. My daughter has played at their house. They had pool parties, sleepovers, and I've seen guests over there. So they integrate their guests into their family activities. It's a real family-run operation.

And finally, just wanted to add that, you know, this is the kind of B&B operation that we need on Kaua'i. People who...they might move here recently, but they become part of the community. I've known Darcy and her family...I said for a year, but I've seen her at the Farmer's Market buying produce to feed her guests as part of the breakfast. I've met them through sailing. Our children have met at the sailing camp and gone to their dance recitals. They participate in many activities here on the island. And I feel it's the type of operation, a bed and breakfast family run that the law is intended to allow, and I hope you can grant this permit. Thank you.

Chair Anderson: Thank you.

Mr. Dahilig: Carl Imparato.

Before Mr. Imparato does his...come up, I do want to circulate a copy of testimony he's given for all homestay applications, so that will be folded into the record for each application.

Carl Imparato: Thank you. Aloha Commissioners. My name is Carl Imparato and this testimony is on ten (10) of the eleven (11) applications that are before you today. It also applies to the 11<sup>th</sup>, but that's the one I wanted to come and speak on separately. Pardon me.

The Planning Commission has not yet given in-depth consideration to the important matter of the criteria that are needed to prevent homestays outside of the Visitor Destination Areas from commercializing and undermining residential neighborhoods, but nonetheless, before you today are eleven (11) applications for homestays. Some of the applications are for legitimate small scale accessory uses in appropriate locations and they may warrant your approval, others are not. So the question is what criteria are you going to use to separate the two?

For this current batch of applications, I believe you need to look at four (4) things to ensure that homestays are neighborhood compatible uses that are truly accessory to residential uses. First, impose explicit conditions that require the property be the primary, full-time residence of the property owner, and that the homestay rentals can only take place while the owner is actually in residence on-site. Secondly, explicitly limit the homestay to no more than one (1) bedroom to be rented to no more than two (2) adults, to ensure that the homestay use is truly an accessory use, rather than the primary use, and does not simply become a TVR in disguise. Third, evaluate the cumulative parking, wastewater, disaster evacuation, and other impacts on the neighborhood of all transient rentals, both TVRs and homestays in the neighborhood, to determine whether those impacts are acceptable; some cases they may be, some cases not. And finally, impose adequate enforcement conditions, including the Applicant's acknowledgement that it's advertisements for the homestay are admissible evidence of the nature of the rental, and make it clear that violation of any of the permit conditions is sufficient ground for permit revocation.

Looking to the future as part of the general rule making on homestays that needs to take place, I believe that you ought to first consider a requirement that the resident owner must have lived on the property for at least two (2) years before posting transient guests, that's anti-speculation thing to think about, consider limiting the percentage of transient rental properties in non-VDA neighborhoods, and create a private right of action as in other communities that will give residents standing to bring enforcement complaints and civil suits for monetary and injunctive relief. There's one final, very important issue that I'd like you to consider. When you issue permits for homestays and TVRs that "run with the land", you're creating negative financial impacts on the neighboring homeowners. Any realtor's going to tell you that when you have a "run with the land" permit, that substantially increases the market value of that property. And because the County's real property tax assessment office does not distinguish between homestay or TVR properties that have "run with the land" permits and the nearby homes that do not have such permits, the homestay/TVR properties drive up the assessed values for all homes in the neighborhood, driving up the property tax bills for all neighboring homeowners. And I verified this with the real property tax assessment office. So for this reason, I believe it's critical...

Mr. Dahilig: Three (3) minutes, Madam Chair.

Mr. Imparato: I'm almost done here.

Chair Anderson: Okay, if you can conclude.

Mr. Imparato: For this reason, I believe that it's critical that you obtain an independent legal opinion regarding the County Attorney's claim that homestay permits and other use permits must

run with the land rather than the applicant. In concluding, I hope that the Commission will act to ensure that homestays are truly mom and pop accessory uses and not TVRs or mini hotels in residential neighborhoods. And I thank you for your time and courtesy.

Chair Anderson: Thank you.

Mr. Dahilig: Madam Chair, that's all I have signed up to testify on this particular item. The Department would recommend making a final call for any other testimony particular to this application.

Chair Anderson: Is there anyone else in the public that would like to give testimony on this particular application? Please step forward.

Tina Sakamoto: Good morning Commission. My name's Tina Sakamoto. I'm a property owner at 5681 Ohelo Road and I'd like to thank...as far as being notified of this permitting, there was a prior issue, I believe it was a childcare permitting that came up and I wasn't provided the adequate notification to testify, so today I'm appearing before you because I'd like to speak in opposition to this permitting. I agree with Carl's testimony; many of his items I wanted to address and there were more, so yes I believe those are all very valid considerations. I am also concerned because this is a long-term rental that homestays might decrease the number of affordable housing, so that's an issue I'd like to also bring forward. I have a long-term tenant in my home and both of them have also expressed concerns that they're in opposition of bringing commercialization into residential areas. A point, as a landlord, I'm concerned about is safety. When we're bringing transient visitors into our neighborhood, there's a safety issue. We know nothing of them, we don't know if there's a sexual predator, so I'm concerned about the safety and proper notification, probably liabilities, too, with an element coming into our neighborhood that would be detrimental. So I am in opposition to this permitting. Thank you.

Chair Anderson: Thank you. Anyone else in the public that would like to give testimony on this particular application? Please step forward.

Okay, seeing none.

Mr. Dahilig: Madam Chair, it would be the recommendation of the Department to close the agency hearing on this particular application.

Chair Anderson: Do I have a motion from the Commission to close the agency hearing?

Mr. Keawe: So moved.

Mr. Mahoney: Second.

Chair Anderson: All those in favor? (Unanimous voice vote) Any opposed? (None) Okay, motion carries 6:0. Agency hearing is now closed.

Class IV Zoning Permit Z-IV-2015-21, Use Permit U-2015-20 and Special Permit SP-2015-5 to allow conversion of an existing residence into a homestay operation on a parcel located along the western side of Hailima Road in Lāwa'i, situated immediately across its intersection with Aka Road, further identified as 3307 D Hailima Road, Tax Map Key 2-6-001: 091, CPR Unit 2, and containing a total area of 67,236 sq. ft. = Michael Levy & Alexis Boilini Trust.

Mr. Dahilig: Thank you, Madam Chair. We are now on the Agency Hearing for Item F.2.c., Class IV Zoning Permit Z-IV-2015-21, Use Permit U-2015-20 and Special Permit SP-2015-5 to allow conversion of an existing residence into a homestay operation on a parcel located along the western side of Hailima Road in Lāwa'i, situated immediately across its intersection with Aka Road, further identified as 3307 Hailima Road, Tax Map Key 2-6-001 parcel 91, CPR Unit 2, and containing a total area of 67,236 square feet. The applicant is Michael Levy and Alexis Boilini Trust. Madam Chair, we do have...again, supplemental submittals from Mr. Chun concerning this application, as well as a letter from Ms. Sakamoto in opposition, as well as agency comments from the Office of Economic Development, County of Kaua'i, State of Hawai'i relating to homestays and Bed & Breakfast operations in the Agriculture District in opposition to all the ag applications, and so that's a letter that has been distributed to the Commissioners.

I do not have anybody signed up to testify on this particular item, Madam Chair. The Department would recommend opening the agency hearing and making a call for any other testifiers for this particular item.

Chair Anderson: Okay. Is there anyone in the public that would like to give testimony on Item 2.c., Class IV Permit Z-IV-2015-21, Michael Levy and Alexis Boilini Trust?

Okay, if you can please approach and state your name for the record.

Ms. Sakamoto: My name's Tina Sakamoto. I'm a resident of Lāwa'i. And for the items that Carl mentioned in the previous testimony and what I've already testified, those are my concerns and I am in opposition. Being a resident of Lāwa'i, I'm concerned about my grandchildren and my great-granddaughter. Their safety and being exposed to potential safety hazards with transient visitors coming in, which we know nothing about and I believe that would jeopardize our safety, our peaceful enjoyment, and our peace of mind. So I am opposed to this permit also. Thank you.

Chair Anderson: Thank you.

Is there anyone else in the public that would like to testify at this time?

Bill Cowern: Aloha. My name is Bill Cowern and I live up Lāwa'i Valley. For the record, I spent ten (10) years as the Vice President of the Farm Bureau here and the last nineteen (19) growing and developing a 3,500 acre tree farm on the island. Most of the issues before the Commission today, including this one, refer to homestays on ag land.



The Planning Department has recently put forth a requirement that each subject property must earn more than 50% of the family income from the agriculture on the property. I would like to discuss the reasonableness of that requirement. This chart, the one I have here, is from the USDA website, and it depicts the medium sources of income from the 2.1 million family farms in the United States. You'll notice that there are only negative numbers from the "on-farm" side of that chart. While most of the income from family farms comes from off-farm income. This off-farm income includes outside jobs, investments, rentals, and since the average age of the head of the family farm is about sixty (60), social security and retirement payments. The USDA breaks down family farms into three (3) categories; residential, intermediate, and commercial; this chart includes all of those. The average on-farm income for all types of family farms in the United States is roughly -\$2,000 a year. The average for residential is about that as well, but the...let me hand this around.

So the applicants before you are being asked to accomplish something very few, if any, of the roughly two (2) million residential family farms are able to accomplish across the entire United States. And what about the land they're on? Most are listed in the Agricultural E category. As you know, ag lands are classed A through E; A and B being prime agricultural lands, C and D being marginal, and E being the dregs. That designation means they're not suitable for growing most crops. Usually it includes high-levels of aluminum in the soils which tie up critical elements like phosphorous, meaning that they stunt growth. But there are also issues of slope, excessive rainfall...

Mr. Dahilig: Three (3) minutes, Madam Chair.

Mr. Cowern: And small lot sizes. One (1) of the applicants, this applicant, is on a site with a 70% slope; otherwise known as a cliff, alright. The net result of all these facts is a recognition that the requirement put forth by the Planning Department is not reasonable at all and is unachievable and looks more like an excuse to deny permit applications than anything else. Thank you.

Chair Anderson: Thank you. Is there anyone else in the public that would like to give testimony on this application?

Alexis Boilini: I have two (2) letters that I was going to submit that (inaudible). Can I do that?

Chair Anderson: You can bring...you can submit them onto the record. First, come and submit your name, and you can read the name of the testimony and we'll...

Ms. Boilini: I don't need to read the testimony, unless you want me to, but can I read the testimony? But it's for my own...

Chair Anderson: We can receive it for the record and we'll review.

Ms. Boilini: Do I read it or no?

So I can't testify for myself (inaudible)?



Chair Anderson: You'll have another time to wherein...in which you can give any comments on the Director's Report.

Mr. Dahilig: And Madam Chair, we'll distribute submitted written testimony from Dan and Kathy Tutour from Evergreen, Colorado, and Judy Edmonds from California Wine Country.

Chair Anderson: Okay. Is there anyone else in the public that would give testimony at this time on this application?

Ms. Boilini: Can I ask another question? I'm sorry. I also wanted to submit this, but I don't know if I should do it during my own...

Chair Anderson: If you have something that is referring to your application, then you will have the opportunity as the Applicant when we are going to take action on the matter to present whatever you need to present.

At this time, and for the public's awareness, we are taking...we're opening the Agency Hearings for each of the applications. It gives the opportunity for the public that's here to give comment and then after the Agency Hearing is closed, or if it remains open, we could...we will be moving onto the action portion where we will take...we will invite the Applicants, as well as the Planners to give the review. And then the Applicants have the opportunity to present their application and any questions, and then we will move forward with whatever action on that particular matter. So at this point, we're in the Agency Hearing, giving opportunity for public testimony. Just to clarify.

Mr. Dahilig: Madam Chair, given the lack of further testimony, the Department would recommend closing the Agency Hearing on this particular matter.

Chair Anderson: Okay. Alright, do I have a motion from the Commission to close the Agency Hearing on this matter?

Mr. Mahoney: Move to close the hearing, Madam Chair.

Ms. Mendonca: Second.

Chair Anderson: All those in favor? (Voice vote 5 ayes) Any opposed? Okay, motion carries. Oh, one (1) opposition?

Mr. Abrams: Yeah.

Chair Anderson: Okay. We'll have one (1) opposition so noted. Motion carries 5:1.

Class IV Zoning Permit Z-IV-2015-22, Use Permit U-2015-21 and Special Management Area Use Permit SMA(U)-2015-8 to allow conversion of an existing residence into a homestay operation on a parcel located along the makai side of Weke Road in Hanalei Town, situated at its

intersection with He'e Road, further identified as 5404 Weke Road, Tax Map Key 5-5-004: 015, and containing a total area of 6,048 sq. ft. = Parnell H. & Michelle I. Kaiser.

Mr. Dahilig: Thank you, Madam Chair. We are now on Item F.2.d., Class IV Zoning Permit Z-IV-2015-22, Use Permit U-2015-21 and Special Management Area Use Permit SMA(U)-2015-8 to allow conversion of an existing residence into a homestay operation on a parcel located along the makai side of Weke Road in Hanalei Town, situated at its intersection with He'e Road, further identified as 5404 Weke Road, Tax Map Key 5-5-004 parcel 15, and containing a total area of 6,048 square feet. The applicant is Parnell and Michelle I. Kaiser.

Again, Madam Chair, we do have two (2) pieces of written testimony; one (1) from Mr. Imperato, as well as one (1) from, I believe, Barbara Robeson and Caren Diamond concerning this particular matter. The Department would recommend opening the Agency Hearing on this particular matter at this time.

Chair Anderson: Okay. Is there anyone in the public that would like to give testimony on this matter?

Mr. Dahilig: I have Carl Imperato, followed by Barbara Robeson.

Mr. Imperato: Aloha, Planning Commissioners. My name is Carl Imperato. I live in Hanalei. My written testimony incorporates the four (4) sets of conditions for evaluating homestay applications; owner-occupancy, maximum size, cumulative impacts, and enforcement that I discussed earlier in my other testimony for the other applications before you today. But as to this particular application for homestay permits, I believe that the application is very deficient as it has many inconsistencies; some of which obscure the scope and the nature of what is being proposed.

The application states, on page four (4), that the height of the house is 34 feet and the height limit is 40 feet; that's not correct. On page seven (7), the application acknowledges the height limit's 25 feet, but somehow now the height of the house is not 34 feet, but 25 feet. So does the structure comply with the CZO or not?

The application states on page four (4) that the lower level is garage and storage, but the floor plan in Exhibit I shows a bedroom, a bathroom, a living room, and a wet bar; for most intents and purposes, a second unit on the lower level.

The application states on page four (4) that the Applicant will rent only one (1) of the bedrooms in the house, but on page eight (8), the application states that the owner will reside in the house and that the "remaining bedrooms will be available to rent". The application goes on to state on page eight (8) that a homestay can be allowed under a Use Permit as an accessory to the existing single-family house, but clearly if three (3) of the four (4) bedrooms in the house are rented to transient guests, that's not an accessory use of the structure; it's the primary use.

In summary, the application raises the question of whether the real plan is for the owner to simply claim that the downstairs will be the owner's corridors, allowing the entire upstairs unit to

be rented as a so-called homestay. And if that's the case, I say "if", but if that's the case, would that really be any different than renting this single-family house as a TVR? The Planning Commission needs to ensure that homestays truly are mom and pop accessory uses of homes and not TVRs, or mini hotels, in residential neighborhoods outside the Visitor Destination Areas. If this was an application to rent one (1) bedroom as a homestay, it would be reasonable to evaluate it using the requirements that I listed earlier; including explicitly limiting the rental to a single bedroom and no more than two (2) adults, and only to periods when the owner-occupant is on-site. But based on the application, it appears that this so-called homestay might not be that. It might not be an accessory residential use, but would rather be another commercial or resort use, essentially another TVR, outside the Visitor Destination Area. I, therefore, support the Planning Director's recommendation to deny the permits. And I thank you for your time.

Chair Anderson: Thank you.

Mr. Dahilig: Barbara Robeson.

Barbara Robeson: Barbara Robeson for the record. Also speaking for Caren Diamond and myself with the testimony that you have, so Aloha Planning Commissioners. We have reviewed the application that was dated April 22, 2015 and we also reviewed the Planning Director's report dated June 9, 2015. Based on the information from both of those documents, we hope the Commission will support the Director's recommendation to deny the proposed homestay permit. So we'll like to cover a few items that are included both in the application and the Director's Report.

The first one, the analysis and evaluation of the Special Management Area impacts in the application, we believe are incomplete and they fail to disclose the cumulative impacts within the SMA that currently exist from the current number and concentration of alternative visitor units in the Hanalei residential neighborhood.

Next, in the application, the analysis and evaluation of the Kaua'i General Plan policies regarding alternative visitor accommodations omitted the most recent and relevant policies that were not sufficiently assessed in the application. The application conflicts with the North Shore Development Plan and did not disclose that the structure was or is some kind of multi-family dwelling unit, which is prohibited in the area. You can look at the footnote. And the contents of the application suggests a vacation rental and not a B&B/homestay.

For the safety, health, and welfare of residents and visitors in Hanalei, we believe they would be impacted by adding another alternative visitor accommodation or vacation rental that's in the tsunami evacuation zone. For example, just an overview here of the Hanalei area, the 2010 census resident population for Hanalei was 450 persons and the census for 2010 housing units occupied by residents was 186 units. The TVNCs, the TVRs in Hanalei, according to the permits that have been issued is for 125 units. And based on the average TVR occupancy, which there's a footnote there that tells you where that information came from, it's about 6 persons per unit, so that means that there would be 750 persons...a potential of 750 persons versus 450 residents living in the tsunami evacuation zone in Hanalei. The cumulative impacts and the intensity of use from the high number of TVRs in the Hanalei area has disproportionately

affected the health, safety, and welfare of residents. And as you can see from the map in our testimony, we got that information from the VRBO map and the large concentration of alternative visitor units in Hanalei is already past the point of saturation in the residential neighborhood.

Below on the testimony there's...we took the...

Mr. Dahilig: Three (3) minutes, Madam Chair.

Chair Anderson: If you can conclude your remarks.

Ms. Robeson: Okay. Please look at this table here, before you make your decision, because it lists the application comments and the discrepancies on what they said. And in accordance with the General Plan, no more approvals for alternative visitor transient vacation uses should be approved in the Hanalei area. The proposed use is incompatible with the zoning in Hanalei and this application should be denied. Thank you for your time.

Chair Anderson: Thank you.

Mr. Dahilig: Madam Chair, that's all I have signed up to testify on this particular item.

Chair Anderson: Is there anyone else in the public that would like to give testimony on this item?

Mr. Dahilig: Madam Chair, seeing none, the Department would recommend closing the Agency Hearing on this particular matter.

Chair Anderson: Do I have a motion to close the Agency Hearing?

Mr. Keawe: So moved.

Chair Anderson: Okay, do I have a second?

Mr. Mahoney: Second.

Chair Anderson: Any discussion? (None) Okay, all those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 6:0.

Class IV Zoning Permit Z-IV-2015-23 and Use Permit U-2015-22 to allow conversion of an existing residence into a homestay operation on a parcel located along the eastern side of Kipuka Street in the Weliweli Houselots Subdivision in Po'ipū, situated approx. 150 ft. east of the Muku Place/Kipuka Street intersection, further identified as 1960 Muku Place, Tax Map Key 2-8-024: 020, and containing a total area of 11,174 sq. ft. = Bret K. & Ellen Knopf, Trust.

Mr. Dahilig: Thank you, Madam Chair. We are now on Item F.2.e., Class IV Zoning Permit Z-IV-2015-23 and Use Permit U-2015-22 to allow conversion of an existing residence into a



homestay operation on a parcel located along the eastern side of Kipuka Street in the Weliweli Houselots Subdivision in Po'ipū, situated approximately 150 feet east of the Muku Place/Kipuka Street intersection, further identified as 1960 Muku Place, Tax Map Key 2-8-024: 020, and containing a total area of 11,174 square feet. The applicant is Bret K. and Ellen Knopf, Trust.

Madam Chair, I do not have anybody signed up to testify on this particular item, nor do I have any submitted written testimony. The Department would recommend opening the Agency Hearing at this time.

Chair Anderson: Okay, is there anyone in the public that would like to give testimony on this agenda item?

Please step forward.

Steven Hanley: Aloha, good morning. My name is Steven Hanley. I live at 2490 Kipuka Street in Kōloa. I wrote a brief letter that I'd like to read.

Dear Kaua'i Planning Commission Members, my wife Ramona and I are neighbors of Bret and Ellie Knopf. We have lived two (2) houses away from the Knopf 'Ohana for the last six (6) years. We support the homestay application submitted by Bret and Ellie as they truly embody the Aloha spirit. Ellie's family has been part of the Hawaiian Islands since the late 1800's. Ellie is the 4<sup>th</sup> generation of her family to have a presence in Hawai'i. Of all the beautiful people I have met during our brief residence in Kaua'i, none embody the Aloha spirit like Ellie and Bret Knopf. The Knopf's spend quality time with every visitor they meet on Kaua'i and they show them in a very relaxed and humbled manner the truly beauty of Kaua'i and true Hawaiian Aloha. Bret and Ellie care deeply about Kaua'i, and they are able to pass their love of the island and Hawaiian culture to visitors on a daily basis. We have been blessed to be the Knopf's neighbors for six (6) years and counting. We support their homestay application, so they can continue to spread the important message of Aloha and their love of Kaua'i to our island's guests. Mahalo nui loa for your time and consideration. Aloha.

Chair Anderson: Thank you.

Is there anyone else in the public that would like to give testimony?

Mr. Dahilig: Madam Chair, seeing none, the Department would recommend closing the Agency Hearing at this time.

Chair Anderson: Okay, do I have a motion to close the Agency Hearing?

Mr. Abrams: Move to close.

Chair Anderson: Do I have a second?

Mr. Mahoney: Second.



Chair Anderson: All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 6:0.

Class IV Zoning Permit Z-IV-2015-24 and Use Permit U-2015-23 to allow conversion of an existing residence into a homestay operation on a parcel located along the eastern side of Lili'uokalani Street in Kīlauea, situated at its intersection with Kolo Road, further identified as 2535 Lili'uokalani Street, Tax Map Key 5-2-011: 038, and containing a total area of 1.956 acres = Nicki Lorayn Pignoli Trust.

Mr. Dahilig: Thank you, Madam Chair. We are now on Item F.2.f., Class IV Zoning Permit Z-IV-2015-24 and Use Permit U-2015-23 to allow conversion of an existing residence into a homestay operation on a parcel located along the eastern side of Lili'uokalani Street in Kīlauea, situated at its intersection with Kolo Road, further identified as 2535 Lili'uokalani Street, Tax Map Key 5-2-011 parcel 38, and containing a total area of 1.956 acres. The applicant is Nicki Pignoli Trust.

Madam Chair, I do not have anybody that has submitted written testimony on this particular item and the Department would recommend opening the Agency Hearing at this time.

Chair Anderson: Is there anyone in the public who would like to give testimony on this agenda item?

Okay, seeing none.

Mr. Dahilig: Madam Chair, given nobody signed up and nobody willing to testify on this particular item, the Department would recommend closing the Agency Hearing at this time.

Chair Anderson: Do I have a motion from the Commission to close the Agency Hearing?

Mr. Abrams: So moved.

Mr. Mahoney: Second.

Chair Anderson: Any discussion? (None) Okay, all those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 6:0. Thank you.

Class IV Zoning Permit Z-IV-2015-25 and Use Permit U-2015-24 to allow conversion of an existing residence into a homestay operation on a parcel located along the southern side of Aka Road in Lāwa'i, situated approx. 450 ft. south of the Kiani Road/Aka Road intersection, further identified as 3265 Huaka Road, Tax Map Key 2-6-013: 046, and containing a total area of 8,751 sq. ft. = Darryl L. Chong/Julie Beth K. Simeona Chong.

Mr. Dahilig: Thank you, Madam Chair. We are now on Item F.2.g., Class IV Zoning Permit Z-IV-2015-25 and Use Permit U-2015-24 to allow the conversion of an existing residence into a homestay operation on a parcel located along the southern side of Aka Road in Lāwa'i, situated approximately 450 feet south of the Kiani Road/Aka Road intersection, further identified as 3265

Huaka Road, Tax Map Key 2-6-013 parcel 46, and containing a total area of 8,751 square feet. The applicant is Darryl Chong and Julie Beth Simeona Chong.

Madam Chair, I do not have anybody signed up to testify on this particular item, but I do believe that the testimony from the Office of Economic Development in opposition to this...written opposition to this matter is received for the record. The Department would recommend opening the Agency Hearing at this time.

Chair Anderson: Is there anyone in the public who would like to give testimony on this agenda item?

Ms. Sakamoto: My name is Tina Sakamoto and I am a resident of Lāwa'i. My concern is that today we have four (4) homestays coming before you requesting a permit in Lāwa'i. Now, are we becoming an unofficial and illegal VDA? That's four (4) in Lāwa'i, so I see a deterioration of our peaceful enjoyment, an erosion of our neighborhood, there'll be noise, quality of life will be diminished. And because there isn't an official...I guess it would be comment or complaint, that does not mean they exist, and I'm sure you've heard them before, other testifiers submitting comments on how their lifestyle, their homes were either invaded, or there was noise. So there are issues of compatibility, so I'm asking you to deny this permit also. Thank you.

Chair Anderson: Thank you.

Is there anyone else in the public that would like to give testimony at this time?

Ellie Knopf: My name is Ellie Knopf. It was my case that was read before this. Thank you, Steve. My great-grandfather opened the first bar and lodging accommodations on our island in Waimea in 1899. To me, the homestays are about Aloha; we live there, we meet our guests. I have been to Julie and Darryl's residence as guests, invited us for dinner, and Julie and Darryl are all about Aloha. It was very important that we park in a certain place when we came for dinner, so as not to disturb the neighbors. My feeling is Julie and Darryl are, again, about Aloha and they care as much about the residence they live in as their guests that come to visit them. Thank you.

Chair Anderson: Thank you.

Okay, if there's anyone else, please approach.

Nicki Pignoli: Nicki Pignoli, for the record, and my case was just heard by the County Planning Department just prior to this. I just want to say in reference to the fears that are being expressed over and over and over about B&B residents, I don't think there's a single case in...on record, a single complaint from a B&B visitor who has, in any way, broken the law on Kaua'i, has sexually molested any children, has broken into any houses. I mean we...granted we do have a criminal element here on the island, but it is not B&B visitors. And the reason why there are four (4) applications in Lāwa'i today is based on the fact that the Planning Commission did not send out cease and desist orders to every single B&B owner, only some of us were told to cease and desist, and the majority of the people in Lāwa'i were the lucky recipients of those notices.

So there are a lot more B&Bs out there, they're just not appearing before Planning today. Thank you.

Chair Anderson: Thank you.

Is there anyone else in the public that would like to give testimony at this time? We'll have you and then...

Ms. Boilini: I guess I just wanted... I'm Alexis Boilini and I live very close to Julie and Darryl, and what Ellie said is so correct. They are the nicest, most Aloha, friendly people that I think I know besides these other people. (Laughter in background) But I just wanted to clarify something. When you talk about sexual molestation and crime, I don't see any tourist as well performing those bad deeds, but we're seeing a lot of locals lately that are... There are a lot of anger issues on this island that could be because of all the divisiveness that maybe our leadership might be participating in actually that is making people angry at each other and now there's anger on both sides because of these issues that come up before the County. And we're seeing it out there, you know, we see it all across the United States, you know, where we see people getting really angry at each other and that's too bad. I just hope our leadership will come together here and try to do something about the divide that's happening in our communities because bed and breakfasts are all about Aloha, and I think Julie and Darryl are a great example of that and their guests are too. Thank you.

Chair Anderson: Thank you.

Okay. If there's anyone else in the public that would like to give testimony at this time.

Lorna Hoff: Aloha Commission. My name's Lorna Hoff and I just want to reiterate what Alexis said about Darryl and Julie Chong. They are one of the couples that do show Aloha and again, I want to bring up about...I believe the lady mentioned that if there are complaints, people don't complain. All these people have gone...this system has gone throughout to neighbors two (2) miles away, and just in general, when you approach people and ask them, if you had a complaint about something, would you know where to go to complain? And they look at me and just laugh, and they just say of course, there's always a Department that's available to complain to. And just to give you an example, with the trash, I went to the Trash Department with the new cans and they're wonderful. They just solved the problem for me and bent over backwards. So the County is willing to hear any complaints and people know that they can come forward and it would be at least taken...thoughts would be taken to solving the problem. Thank you.

Chair Anderson: Thank you. Okay.

Cathy Covern: Thank you. My name is Cathy Covern and I'm also one of the applicants today. I wanted to address a couple of the concerns that were brought up by the people who apparently want to see this stopped. One of the benefits of being a bed and breakfast is that I personally screen everybody that comes to stay in my home. I've been doing it for a very long time and we have the ability to sort of recognize when somebody might be a problem. So the chances of

having a guest who is a safety risk, I think with us is a whole lot less than at a hotel where reservations are made blindly online or through a reservation agency.

And the other concern about Lāwa'i. Lāwa'i is a very large area and I know...I think we all understand the ahupua'a of Lāwa'i Valley is huge. And so the fact that there's four (4) of us in Lāwa'i Valley, we're all very far apart. It's not like we're all right in a clump, you know, ruining neighborhoods. In fact, our property is very isolated; I know Julie's property is very isolated, as is Alexis'. So thank you for the opportunity.

Chair Anderson: Thank you.

Is there any public testimony on this agenda item?

Okay, seeing none.

Deputy Director Kaaina Hull: Absent any further testimony, Madam Chair, the Department would recommend closing the Agency Hearing on this particular item.

Chair Anderson: Do I have a motion to close the Agency Hearing?

Mr. Abrams: So moved.

Chair Anderson: Do I have a second?

Mr. Mahoney: Second.

Chair Anderson: Any discussion? (None) All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 6:0.

Class IV Zoning Permit Z-IV-2015-27, Use Permit U-2015-26 and Special Permit SP-2015-7 to allow conversion of an existing residence into a homestay operation on a parcel located along the makai side of Kalihiwai Road in Kīlauea, situated approx. ¼-mile north of its intersection with Kūhiō Highway, further identified as 2828 P Kalihiwai Road, Tax Map Key 5-2-010: 31, CPR Unit 2, and affecting an area approx. 3.167 acres of a larger parcel = Steven V. Ruddell/Marlyn W. Ruddell, Trust.

Mr. Dahilig: Thank you, Madam Chair. We are on Item F.2.h., Class IV Zoning Permit Z-IV-2015-27, Use Permit U-2015-26 and Special Permit SP-2015-7 to allow conversion of an existing residence into a homestay operation on a parcel located along the makai side of Kalihiwai Road in Kīlauea, situated approximately ¼-mile south (sic) of its intersection with Kūhiō Highway, further identified as 2828 P Kalihiwai Road, Tax Map Key 5-2-010 parcel 31, CPR Unit 2, and affecting an area approximately 3.167 acres of a larger parcel. Steven Ruddell and Marlyn Ruddell, Trust is the applicant.

Madam Chair, we do have testimony submitted from the Office of Economic Development from the Mayor's Kaua'i Agricultural Advisory Committee in opposition to this matter, as well as



supplemental information from Marlyn Ruddell. Madam Chair, I would recommend opening the Agency Hearing at this time.

Chair Anderson: Is there anyone in the public that would like to give testimony on this agenda item?

Mr. Chun: Good morning. Just for the record, Jonathan Chun on behalf of the applicant, Ms. Ruddell. Ms. Ruddell is not present today. She had a family emergency to attend to. Her mother is very seriously ill and she needed to fly up to her mother in the mainland. Also, her daughter is...has some...I think graduates also, so she was planning on leaving after the hearing, but because her mother's illness she had to go up. So I just wanted to inform the Commission she's not here. We have no opposition to having the public testimony being taken, but I just wanted to inform the Commission that as we go forward that she won't be here today, and we would request a continuance on her behalf and that is for further action.

Chair Anderson: Okay, thank you.

Mr. Chun: Also, on behalf of the other applicants, I gather OED has submitted testimony or comments. Just for the record, we have not received any of those comments, written comments. We're kind of lost for what they might say or what the Commission has before them.

Mr. Dahilig: So we can certainly get a copy to you, Mr. Chun. That was received by our office at 8:20 this morning, so we can definitely provide you a copy of that. And if I could request, Madam Chair, if I can take (inaudible)...if a deferral is going to be requested of the particular matter, is there a date that Mr. Chun would be amenable to moving the...continuing the Agency Hearing for?

Mr. Chun: Yeah, I would suggest for Ms. Ruddell probably in August sometime. I mean, we could do it in July, but my understanding...well I'm not going to be available in July and I believe some of the Staff members from the Department might not be available. And Ms. Ruddell indicated August would be fine with her.

Mr. Dahilig: Madam Chair, unless there's other...any other testimony, the Department would recommend moving the...I guess, continuing the Agency Hearing to the second meeting in August. But there is one (1) testifier, I believe.

Chair Anderson: Okay, so is there any further testimony on this item?

Ben Wellborn: Good morning Madam Chair and Commissioners. My name is Ben Wellborn. I know that this is an application that involves ag zoning and I want to just say that it seems as though the Department and the County are generally taking a very oppositional stance on ag zoned land as it relates to homestays. I think that's pretty inconsistent with how the TVR Ordinance was reviewed and passed. I think that some of the ag land homestays are providing benefits beyond what are found for the residential homestays and so I would like to ask the Commissioners to reconsider the Department's recommendations as it relates to ag land.



Chair Anderson: Thank you. Any further testimony on this agenda item?

Bill Cowern: Since this is an ag related issue, I just thought I'd finish my testimony. First of all, going back a little bit, I missed a little bit in terms of...

Chair Anderson: If you can please state your name for the record.

Mr. Cowern: I'm sorry, it's Bill Cowern and I'm from Lāwa'i. As I stated, there were three (3) categories of family farms who are residential, intermediate, and commercial; of those, commercial were the only ones that ever made a profit. Those were categories that had more than \$350,000 a year of sales. On the residential family farms, one (1) out of (3) residential family farms in the entire Country actually made a profit, and that profit, on average, amounted to 7% of the family farms' income. So you're really asking something that's grossly unreasonable here, in terms of deciding whether or not they should have a homestay. I would ask that the Committee (sic) take these facts into account when making their decisions and I would further ask a couple of questions. I don't ever expect to get answers since no one seems to answer any of them, but... When the Planning Department issued permits to over 100 TVRs on agricultural land, why were the same requirements not included? And why were they not recommended for denial? Like all of ours. And secondly, and this one just baffles my mind, how does renting out a bedroom in your existing home have any impact on your ability to grow agricultural crops on your land, other than a positive one, by providing some additional income? I just...I can't just fathom how that's a problem. Thank you.

Chair Anderson: Okay. Is there anyone else that would like to give testimony on this agenda item?

Rick Shunk: Hello Council (sic). My name is Rick Shunk and I'm not sure if this is the proper forum for this, but I just wanted to, for the record, state that a number of months ago I came to the Planning Commission and asked for the information I needed for application for a Special Use Permit. I have copies of the information I was given. I prepared everything per copy, or per the information I was given; the thirteen (13) copies, the burnt DVD, everything. And I came in Friday before the deadline and it was rejected. Evidently, there was a new form that came out that required more information, so I just wanted to go on the record and say that I had my application in on time with the information request that I was given and it was denied. So I just wanted to state that.

Also, in generality, I think I can speak for a lot of people here, I know I can...we're on a one (1) acre ag land and I will say that when we bought our property, it was waist-high weeds, there were literally...virtually no plants producing anything, and it was by virtue of the fact for the past seven (7) years that we have had a homestay, super well received, that I have been able to plant, literally, hundreds of banana plants, many citrus plants. We have a non-GMO, organic garden and it was because of that situation that we're able to further ag use. And as the previous testifier stated, that...I think he said like one (1) out of four (4) families are actually...in the United States are actually able to make a living off agriculture. I think it would behoove the Council (sic) to consider that if you're really concerned about furthering agriculture that you understand and accept that vacation rentals help subsidize agriculture and it will practically never

go the other way around. Also, consider if the spirit of preserving ag land...let's say I had a ½-acre in my backyard, ag land and it was all lawn, does that mean I'm not allowed to use it for recreational facilities? Like playing football, or croquet whatever, that it has to be dedicated ag. I really think there needs to be a paradigm shift here and understand that vacation rentals, homestays absolutely do help support agriculture and they further it. Granted, on our property if I didn't have the homestay, I wouldn't have the agriculture I have now. I have plans for an aquaponics garden. There's a lot of stuff I want to do and that's been subsidized from our homestay. Thank you.

Chair Anderson: Okay. Taking any other public testimony specific to this agenda item.

Kim Richard: Ag right?

Chair Anderson: If...

Ms. Richard: Ag and homestay. Isn't that what we've been talking about?

Chair Anderson: Yes, but if...that's...you can go ahead and go forward with your testimony.

Ms. Richard: My name is Kim Richard.

Chair Anderson: Okay.

Ms. Richard: My mother's Susan Gailey. And my mother, daughter, and I have had horses since we were sixteen (16). That's our "ag". My daughter Lacey was riding at three (3). We've lived on the north shore of Kaua'i...I'm reading my letter...since 1988. My daughter has a BA in Equine Science from Colorado University at Fort Collins. She came home, immediately began to participate in our small business, Just Horsin' Around. She's magic with children and is certain to educate them about the care of horses and animals in general. I'm astounded that the Planning Department would recommend a denial of our homestay because it brings in too much money. We started and continue with our small business because we love sharing our affection and knowledge of horses and other animals with children. It is impossible to actually make money with an Equine education and riding business; you need a 150 acres, lots of horses, several million dollars to even start. We do this because we love it, and many times we do it free because we love our community and our children here in the community. The income from our homestay helps us to pay for some of our feed for our horses and many other animals. We never expected to get rich on Just Horsin' Around. So, I'm wondering how you thought up a rule that we need to make more money with our ag business than our homestay, which actually makes us...which actually helps us to feed our animals, pay our vet bills and taxes, and trash pickup. As my mother and I have aged, the homestay during the past few years are helping pay for our utilities and some of our food for ourselves. Some of you want to take away, this away, this essential income from us and I just don't get it; I don't comprehend it. Thanks for listening.

Chair Anderson: Thank you. Is there anyone else in the public who would like to give testimony? And this is regarding the Steven V. Ruddell and Marlyn W. Ruddell, Trust permit, Z-IV-2015-27.

Okay.

Mr. Dahilig: Seeing none, Madam Chair, the Department would recommend closing the Agency Hearing at this time.

Chair Anderson: Okay. There was a request...

Mr. Dahilig: Oh sorry, I'm sorry.

Chair Anderson: Regarding the deferral of the Agency Hearing.

Mr. Dahilig: I'm kind of in automatic mode here. (Laughter in background) The Department would recommend moving the...continuing the Agency Hearing, per consent of the Applicant, to the second meeting in August.

Mr. Abrams: So moved.

Chair Anderson: Okay.

Mr. Mahoney: Second.

Chair Anderson: All those in favor? (Unanimous voice vote) Any opposed? (None) Okay, motion carries 6:0. This Agency Hearing is deferred until August...the second meeting in August.

Class IV Zoning Permit Z-IV-2015-28, Use Permit U-2015-27 and Special Permit SP-2015-8 to allow conversion of an existing residence into a homestay operation on a parcel located along the mauka side of Kahiliholo Road in Phase 2 of the Kahiliwai Ridge Subdivision in Kīlauea, situated at the terminus of Kahiliholo Road, further identified as 6241 Kahiliholo Road, Tax Map Key 5-2-022: 014, CPR Unit 2, and affecting an area approx. 3.479 acres of a larger parcel = Susan Gailey Trust/Kim E. Richard Trust.

Mr. Dahilig: Thank you, Madam Chair. We are now on Item F.2.i., Class IV Zoning Permit Z-IV-2015-28, Use Permit U-2015-27 and Special Permit SP-2015-8 to allow conversion of an existing residence into a homestay operation on a parcel located along the mauka side of Kahiliholo Road in Phase 2 of Kahiliwai Ridge Subdivision in Kīlauea, situated at the terminus of Kahiliholo Road, further identified as 6241 Kahiliholo Road, Tax Map Key 5-2-022 parcel 14, CPR Unit 2, and affecting an area approximately 3.479 acres of a larger parcel. The applicant is the Susan Gailey Trust and Kim E. Richard Trust.

Madam Chair, we do have testimony again from the Mayor's Agricultural Advisory Committee in opposition to this application and we do have two (2) individuals signed up to testify on this particular matter. The Department would recommend opening the Agency Hearing at this time.

Chair Anderson: Okay, we'll open the Agency Hearing. Who is the first person listed or signed up?

Mr. Dahilig: Kim Richard, followed by Hal Selover. Kim Richard?

Hal Selover: Yeah, she just spoke.

Mr. Dahilig: Okay.

Mr. Selover: Good morning. My name is Hal Selover and I live at 6051 Kahiliholo Road. I am here supporting my neighbor, Susan Gailey and her daughter, Kim. I'd like to read some letters from other supporting neighbors and friends.

This is from Amy Collin from 6239 Kahiliholo Road. I am writing this letter today on behalf of my neighbors, Susan and Kim. They live next door and we are only separated by a wire fence. They respectively have a quiet household and my two (2) young girls love going to see their many animals. My oldest daughter, who is five (5), has gained so much knowledge already of horsemanship and compassion to animals. My girls have even lovingly nicknamed their goat "French Fry". Their animals are very well-taken care of and they are also respectful of not just their land, but that of their neighbors as well. I appreciate and support local and small businesses. As a parent, I am trying my hardest to instill the core values of hard work, empathy, and patience. These three (3) values can be nurtured with the awe and responsibility of caring for an animal. My girls adore and are fascinated with the horses. They want to learn anything and everything, and Kim is always willing to take the time to patiently answer each and every question. Nurturing this childhood wonder will only serve them well in the future as they learn to think for themselves. But considering other, both human and animal perspectives, this ag business is an asset to have on the north shore for both children and adults alike. The cottage does not have any negative impacts on our personal lives and I fully support the license for the homestay.

This second letter is from Philip Helwick. I am writing on behalf of my neighbors and friends of Susan Gailey and her daughter, Kim, and granddaughter, Lacey. As a retired Horse Trainer and Riding Instructor, I cannot emphasize enough the importance of proper training and guidance for people's interaction with and the appreciation for the art of horsemanship, as well as general animal husbandry. These women take their responsibilities seriously and provide thoughtful, professional, and caring instruction in riding care and love for the horses, and other farm animals. Expensive time, labor, and materials is rarely compensated in monetary returns from lessons or fees. This...the income from a small homestay can make the difference for the survival of such an important small ag business that benefits the whole community, as well as providing tax revenue for the County. I, therefore, support providing a license for homestay to keep an important local business viable.

From Bob and Peggy Turchen, it is our understanding that you are hearing an appeal that would allow Susan Gailey a homestay special use exemption for her property where she lives with her daughter and operates an ag business, Just Horsin' Around. By way of background, we live down the road from the property that you're reviewing and we have known Susan and her family



for twenty-two (22) years, and have been property owners on the Kahiliwai Ridge. Over that time, we have known them as people of integrity, very respectful of, and very well-liked by their neighbors.

Mr. Dahilig: Three (3) minutes, Madam Chair.

Mr. Selover: Okay. And over this same timeframe, we have never heard of anyone complaining about the guests staying on her property. On the other hand, we have the direct contact with people who have stayed with Susan and who have experienced the delight of close contact with the horses she keeps part of her business. In 2009, we brought our horse to Kaua'i from Connecticut, a transition that we would not have been able to make without the knowledgeable care and help provided by Susan, her daughter, and Lacey. We boarded Kona, our horse, on Susan's property for 1 ½ years. Her facilities featured a covered stall, grazing pastures maintained perfect by...for Kona's needs.

Chair Anderson: If you can please conclude your remarks.

Mr. Selover: Okay. There is no doubt that there is...that not allowing this special use exemption will substantially harm a very unique business that is an asset to the community. And as well, will cause financial harm to a kupuna trying to sustain herself and support her family. Thank you.

Chair Anderson: Thank you. Is there anyone else in the public that would like to give testimony on this agenda item?

Mr. Dahilig: Seeing none, Madam Chair, the Department would recommend closing the agency hearing at this time.

Chair Anderson: Okay, do I have a motion to close the Agency Hearing?

Mr. Mahoney: Move to close, Madam Chair.

Mr. Katayama: Second.

Chair Anderson: Okay, all those in favor? (Unanimous voice vote) Any opposed? (None)  
Motion carries 6:0.

Class IV Zoning Permit Z-IV-2015-30, Use Permit U-2015-29 and Special Permit SP-2015-10 to allow conversion of an existing residence into a homestay operation on a parcel located along the southern side of Kalama Road in Wailua Homesteads, situated approx. 2,000 ft. west of its intersection with Opaekaa Road, further identified as 6471 Kalama Road, Tax Map Key 4-2-002: 026, CPR Unit 2, and affecting an area approx. 3.68 acres of a larger parcel = Samuel A. & Eugenia Caliendo.



Mr. Dahilig: Thank you, Madam Chair. We are on Class IV Zoning Permit... Okay, I guess Madam Chair, this would probably be a good time to take a caption break. We've been going about an hour forty-five.

Chair Anderson: Okay, so given that, we'll take a caption break. Return in ten (10) minutes.

The Commission recessed this portion of the meeting at 11:01 a.m.

The Commission reconvened this portion of the meeting at 11:15 a.m.

Chair Anderson: Okay, call this meeting back to order.

Mr. Dahilig: Thank you, Madam Chair. We are now on Item F.2.j., Class IV Zoning Permit Z-IV-2015-30, Use Permit U-2015-29 and Special Permit SP-2015-10 to allow conversion of an existing residence into a homestay operation on a parcel located along the southern side of Kalama Road in Wailua Homesteads, situated approximately 2,000 feet west of its intersection with Opaekaa Road, further identified as 6471 Kalama Road, Tax Map Key 4-2-002 parcel 26, CPR Unit 2, and affecting an area approximately 3.68 acres of a larger parcel. The applicants are Samuel and Eugenia Caliendo.

Madam Chair, other than the letter from the Mayor's Ag Advisory Committee, we do not have any other written testimonies submitted for this particular item. The Department would recommend opening the Agency Hearing at this time for this matter.

Chair Anderson: Is there anyone in the public that would like to give testimony on this agenda item? Please step forward.

Mr. Dahilig: Madam Chair, seeing none, it would be the Department's recommendation to close the Agency Hearing at this time.

Chair Anderson: Do I have a motion from the Commission to close the Agency Hearing?

Mr. Keawe: So moved.

Mr. Abrams: Second.

Chair Anderson: Any discussion? (None) All those in favor say "aye". (Unanimous voice vote) Any opposed? (None) Okay, motion carries 6:0.

Class IV Zoning Permit Z-IV-2015-26, Use Permit U-2015-25 and Special Permit SP-2015-6 to allow conversion of an existing residence into a homestay operation on a parcel located along the eastern side of Kua Road in Lāwa'i Valley, further identified as 4896 Kua Road, Tax Map Key 2-5-002: 037 and containing a total area of 3.089 acres = William I. & Catherine F. Covern.

Mr. Dahilig: Thank you, Madam Chair. We are now on Item F.2.k., Class IV Zoning Permit Z-IV-2015-26, Use Permit U-2015-25 and Special Permit SP-2015-6 to allow conversion of an

existing residence into a homestay operation on a parcel located along the eastern side of Kua Road in Lāwaʻi Valley, further identified as 4896 Kua Road, Tax Map Key 2-5-002 parcel 37 and containing a total area of 3.089 acres. The applicants are William and Catherine Cowern.

Madam Chair, I do have one (1) letter in opposition from Tina Sakamoto for this particular item, as well as, again, the letter from the Mayor's Ag Advisory Committee in opposition to this particular application. Madam Chair, the Department would recommend opening the Agency Hearing at this time.

Chair Anderson: Is there anyone in the public that would like to give testimony on this agenda item?

Ms. Sakamoto: My name's Tina Sakamoto. I'm a resident of Lāwaʻi. The Planning Commission's finding of facts address compatibility, and in particular, it's safety, peace, comfort, general welfare of persons residing or working in the neighborhood. Now, I brought before you my concerns on some of these compatibility issues and it wasn't fear-based, nor fear; they were valid concerns for the neighborhood of Lāwaʻi. So again, I urge you to deny this permit. Thank you.

Chair Anderson: Thank you. Is there anyone else that would like to give testimony on this agenda item?

Mr. Dahilig: Madam Chair, seeing none, the Department would recommend closing the Agency Hearing at this time.

Chair Anderson: Do I have a motion to close?

Mr. Mahoney: Move to close, Madam Chair.

Chair Anderson: Second?

Mr. Katayama: Second.

Chair Anderson: Any discussion? (None) All those in favor? (Unanimous voice vote) Any opposed? Seeing none, motion carries 6:0.

Class IV Zoning Permit Z-IV-2015-29, Use Permit U-2015-28 and Special Permit SP-2015-9 to allow conversion of an existing residence into a homestay operation on a parcel located along the mauka side of Kōloa Road in Lāwaʻi, situated approximately 500 feet north of the Mānā Hema Place/Kōloa Road intersection, further identified as 3528 B Mānā Hema Place, Tax Map Key 2-5-005: 080, CPR Unit 1, and affecting an area approx. 1.032 acres of a larger parcel = John R. & Lorna E. Hoff, Trust.

Mr. Dahilig: Thank you, Madam Chair. We are now on Item F.2.1., Class IV Zoning Permit Z-IV-2015-29, Use Permit U-2015-28 and Special Permit SP-2015-9 to allow conversion of an existing residence into a homestay operation on a parcel located along the mauka side of Kōloa

Road in Lāwaʻi, situated approximately 500 feet north of the Mānā Hema Place/Kōloa Road intersection, further identified as 3528 B Mānā Hema Place, Tax Map Key 2-5-005 parcel 80, CPR Unit 1, and affecting an area approximately 1.032 acres of a larger parcel. John R. and Lorna E. Hoff are the applicants for this particular application.

Madam Chair, we do have testimony in opposition to this from Tina Sakamoto, as well as, again, the letter from the Mayor's Ag Advisory Council, and we do also have supplemental information from Mr. Chun who's supplementing his application. Madam Chair, the recommendation would be for the Department to recommend that we open the Agency Hearing at this time.

Chair Anderson: Is there anyone in the public that would like to give testimony on this agenda item?

Ms. Sakamoto: Tina Sakamoto, resident of Lāwaʻi. Again, my concern is the commercialization of our neighborhood in Lāwaʻi, and I'd like you to seriously consider this. It seems to be evident that there's many illegal B&B's operating and I hope you bring forth the closure of these. There are some concerns with this particular permit that were brought forward before the County Council; the issue of ag land lockouts. So I'd like you to also consider the testimony from the Kauaʻi County Council regarding this permit and deny the application. Thank you.

Ms. Boilini: Alexis Boilini. Tina's testimony that there's a problem with the compatibility, I think most of the applicants here today their applications pass with flying colors on the compatibility issues. So I'm just wondering what she...what her complaints are on the ag portion.

Chair Anderson: Okay. Any other public testimony?

Michael Levy: Michael Levy, Lāwaʻi. In actual fact, it's the tourist that are being harassed by locals, so for her to be worrying about child molesters from tourists seems pretty crazy. That's all.

Chair Anderson: Okay. Any further testimony? I do ask that testimony not reference particular individuals giving opinions on their testimony, rather give your testimony on the particular item that's on the agenda.

Mr. Dahilig: Madam Chair, seeing no further testimony, the Department would recommend closing the Agency Hearing at this time.

Chair Anderson: Okay. Do I have a motion to close from the Commission?

Mr. Mahoney: Move to close, Madam Chair.

Mr. Keawe: Second.

Chair Anderson: Okay. All those in favor? (Unanimous voice vote) Any opposed? (None) Okay, motion carries 6:0.

**Continued Public Hearing (None)**

**Mr. Dahilig:** Thank you, Madam Chair. We are on Item F.3., Continued Public Hearing. You have none this morning.

**New Public Hearing (None)**

**Mr. Dahilig:** Item F.4., New Public Hearing. You have none this morning.

**All remaining public testimony pursuant to HRS 92 (Sunshine Law)**

**Mr. Dahilig:** Madam Chair, we're on Item F.5., any remaining public testimony pursuant to HRS 92. I believe all items have been brought before...brought open for public testimony, but it would behoove the Commission and our recommendation to ask for any further testimony should anybody wish to testify on any agenda item.

**Chair Anderson:** Okay. Is there anyone in the public that would like to give testimony on any agenda item today? This is your time to give additional...any further testimony on any agenda item.

Okay, seeing none.

**CONSENT CALENDAR**

**Status Reports (None)**

**Mr. Dahilig:** Thank you, Madam Chair. G., Consent Calendar, you have no status reports.

**Director's Report(s) for Project(s) Scheduled for Agency Hearing on 7/14/15.**

**Mr. Dahilig:** And we do not have a meeting on the...on 7/14/15, so there are no Director's Reports scheduled for that Agency Hearing.

**EXECUTIVE SESSION (None)**

**Mr. Dahilig:** There is no Executive Sessions and you've handled all General Business Matters.

**COMMUNICATION (For Action) (None)**

**Mr. Dahilig:** As well as Item J., Communications, you have none for action.



## **COMMITTEE REPORTS (None)**

Mr. Dahilig: No Committee Reports.

## **UNFINISHED BUSINESS (For Action) (None)**

Mr. Dahilig: And no Unfinished Business.

## **NEW BUSINESS (Continued)**

Class IV Zoning Permit Z-IV-2015-15, Use Permit U-2015-14 to allow conversion of an existing residence into a bed and breakfast operation on a parcel located along the western side of Kuamoo Road in Wailua Homesteads, situated within the Wailua Terrace Subdivision and approx. 125 ft. south of the Ohelo Road/Kuamoo Road intersection, further identified as 5663 Ohelo Road, Tax Map Key 4-2-009: 011, and containing a total area of 18,739 sq. ft. = Mohala Ke Ola Management, LLC.

Class IV Zoning Permit Z-IV-2015-21, Use Permit U-2015-20 and Special Permit SP-2015-5 to allow conversion of an existing residence into a homestay operation on a parcel located along the western side of Hailima Road in Lāwa'i, situated immediately across its intersection with Aka Road, further identified as 3307 D Hailima Road, Tax Map Key 2-6-001: 091, CPR Unit 2, and containing a total area of 67,236 sq. ft. = Michael Levy & Alexis Boilini Trust.

Class IV Zoning Permit Z-IV-2015-22, Use Permit U-2015-21 and Special Management Area Use Permit SMA(U)-2015-8 to allow conversion of an existing residence into a homestay operation on a parcel located along the makai side of Weke Road in Hanalei Town, situated at its intersection with He'e Road, further identified as 5404 Weke Road, Tax Map Key 5-5-004: 015, and containing a total area of 6,048 sq. ft. = Parnell H. & Michelle I. Kaiser.

Class IV Zoning Permit Z-IV-2015-27, Use Permit U-2015-26 and Special Permit SP-2015-7 to allow conversion of an existing residence into a homestay operation on a parcel located along the makai side of Kalihiwai Road in Kīlauea, situated approx. ¼-mile north of its intersection with Kūhiō Highway, further identified as 2828 P Kalihiwai Road, Tax Map Key 5-2-010: 031, CPR Unit 2, and affecting an area approx. 3.167 acres of a larger parcel = Steven V. Ruddell/Marlyn W. Ruddell, Trust.

Class IV Zoning Permit Z-IV-2015-28, Use Permit U-2015-27 and Special Permit SP-2015-8 to allow conversion of an existing residence into a homestay operation on a parcel located along the mauka side of Kahiliholo Road in Phase 2 of the Kalihiwai Ridge Subdivision in Kīlauea, situated at the terminus of Kahiliholo Road, further identified as 6241 Kahiliholo Road, Tax Map Key 5-2-022: 014, CPR Unit 2, and affecting an area approx. 3.479 acres of a larger parcel = Susan Gailey Trust/Kim E. Richard Trust.



Class IV Zoning Permit Z-IV-2015-26, Use Permit U-2015-25 and Special Permit SP-2015-6 to allow conversion of an existing residence into a homestay operation on a parcel located along the eastern side of Kua Road in Lāwa'i Valley, further identified as 4896 Kua Road, Tax Map Key 2-5-002: 037, and containing a total area of 3.089 acres = William I. & Catherine F. Covern.

Class IV Zoning Permit Z-IV-2015-29, Use Permit U-2015-28 and Special Permit SP-2015-9 to allow conversion of an existing residence into a homestay operation on a parcel located along the mauka side of Kōloa Road in Lāwa'i, situated approx. 500 ft. north of the Mānā Hema Place/Kōloa Road intersection, further identified as 3528 B Mānā Hema Place, Tax Map Key 2-5-005: 080, CPR Unit 1, and affecting an area approx. 1.032 acres of a larger parcel = John R. & Lorna E. Hoff, Trust.

Planning Director Dahilig: Given that Madam Chair, we move back to action under Item M for Class IV Zoning Permit Z-IV-2015-15 and Use Permit U-2015-14. This is the Mohala Ke Ola Management, LLC application. For the Commission's reference since we are handling a large volume of information today, please refer back to the June 9<sup>th</sup> packet; the second of three (3) PDFs and this would start on PDF page 9 of the second...again the second PDF packet from the June 9<sup>th</sup> meeting. And it would start on PDF page 9 for your information.

Madam Chair, Deputy Director Hull and Marisa Valenciano have been...I just want to say been handling a yeoman's effort trying to get these applications at least brought to the Commission for hearing. They will be handling all the homestay applications today, so I want to first acknowledge them for at least that work, but also tee them up to enter into discussions on this particular application. So without objection Madam Chair, I'll turn it over to Mr. Hull.

Deputy Director Hull: Morning Chair, members of the Commission. At the Chair's discretion, I can read a condensed version of the report which you have already received on the June 9<sup>th</sup> hearing.

Chair Anderson: Yes, you may summarize.

Mr. Hull: The proposal is to convert an existing residence into a homestay operation. The residential dwelling contains three (3) bedrooms and four (4) bathrooms. As represented, the Applicant will continue to reside within the dwelling while operating it as a homestay. For transient accommodation purposes, the homestay operation is proposed to utilize two (2) bedrooms within the residential dwelling.

Concerning the Department's preliminary evaluation, the proposed request is to be evaluated pursuant to Section 8-3 of the Kaua'i County Code, as amended, relating to standards for the issuance of a Use Permit. In the case of...number four of that review states, in the case of homestay operations, the presence of the owner at the site acts as a self-regulating mechanism. That is to say, activities that could significantly impact surrounding neighbors are often prohibited by the owners of homestays because such activities are just as, if not more, impactful on the owners who are residing on-site. Number five states, as verified through the County of Kaua'i Real Property Tax Assessment records, the Applicant does not currently have a

homeowner's exemption for the subject dwelling unit. Without the necessary assurance the subject dwelling unit is the owner's primary residence in which they reside, activities that could significantly impact surrounding neighbors, such as noise and traffic impacts may not be self-regulated by an on-site owner. As such, the proposed transient accommodations would therefore function much more like a transient vacation rental and not so much as a homestay. New transient vacation rentals are prohibited outside the Visitor Designation Area because of their associated impacts, and the subject site is located outside of the Visitor Designation Area. The proposed operation could therefore be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the surrounding area, and could cause substantial harmful environmental consequences. That concludes our evaluation.

Chair Anderson: Are there any questions from the Commission to the Planners?

Mr. Abrams: Marisa, or both of you, anyone can answer. So one of the primary ones, because this is residential, is the issue that there was no owner-occupant residing on the property prior to that to have a track record shall we say?

Mr. Hull: The petition states that the owner does reside on the site; however, in order to ensure that the homeowner...that they are residing on-site and that this is their primary residence, the Department has requested to demonstrate a homeowner's exemption, which was ultimately passed by the County Council recently and signed into law by the Mayor. However, this application was accepted prior to the adoption of that law, so we have to accept it, but it is still the Department's position that if you cannot demonstrate that then we are not assured that this is the owner's primary residence and therefore can act in a self-regulating manner to ensure that the impacts are not going on in that particular neighborhood.

Mr. Abrams: Was there any other evidence that would prove that they had been an owner-occupant who failed to file for a homeowner's exemption, but were actually residing on the property?

Mr. Hull: Not that we felt was sufficient enough to meet the standard.

Mr. Abrams: Okay, thank you.

Chair Anderson: Any other questions for the Planner?

Do we have the applicant here today?

Jonathan Chun: Good morning, Jonathan Chun on behalf of the applicant. I'd like to start off by asking a couple questions to Kaaina or to the Planner.

Mr. Dahilig: Madam Chair, if we are proceeding with this matter...proceeding in this matter, I'd just like to say for the record that we are proceeding under the assumption that Mr. Chun is wanting to not enter into an evidentiary hearing as pursuant to the full Contested Case hearing rules set forth by the Planning Commission's rules.

Mr. Chun: As I said, I'd like to just start off by asking a few questions to the Planner or to Kaaina.

Chair Anderson: Okay, so just to clarify whether or not, will you be requesting to go into a Contested Case for this item? For this application?

Mr. Chun: Whether a matter is a Contested Case is not based...is not based upon a request by an applicant. It's based upon the status by law; under Chapter 91 defines what is a Contested Case or Agency Hearing. My understanding today is in fact it was put on the agenda as an Agency Hearing. So as an Agency Hearing, you are going to have to comply with the Agency Hearing. On your own rules, you have on the Agency Hearing procedure, Chapter 6, presentation of the report, question by the Commission, and (inaudible) in the rules state the next step after the questions by the Commission is the question by the Applicant. And I'm just following the rules.

Chair Anderson: I understand, Mr. Chun. It's just for clarity sake because we also are...have quite the agenda that I just want to be able to have an idea of where we're going. If we will be...if there's going to be evidence that's going to be submitted by...for your applicant and we are going into Contested Case then we'll need to, you know, make the appropriate changes and go ahead and schedule that, so...

Mr. Chun: All I'm saying is we are in an Agency Hearing under Chapter 91...is my belief, but you need to check with your Attorneys...but it's my belief, as defined by State law and defined by your rules, we are in an Agency Hearing; that's not based upon a request. All I will say is we will not waive my client's rights to an Agency Hearing as given to us by State law and by your own rules; we don't waive that. But whether it is or not is a determination by your body, by the Commission. If the Commission feels, based on the advice by its Deputy County Attorney, that it is an Agency Hearing, then you need to progress as the rules...as your own rules state. And that's all I'm asking. So I will say that we will want...and all my clients...we're not waiving any rights under the State law, nor in your rules, and we want to assert our rights under your own rules.

Chair Anderson: Okay, thank you.

Mr. Chun: I can read the rules, if you want, but I gather you have them right there.

If you want, I can say rule...as to the order of...in an Agency Hearing.

Mr. Dahilig: So when you get to Section 1-...so we're looking at Chapter 6 right?

Mr. Chun: Correct.

Mr. Dahilig: Okay.

Mr. Chun: 1-6-11. Specifically B. (A) Involves request for intervention. Since there was no request for intervention as indicated by the supplemental report by the Department, we go on to

1-6-11.b. presentation of evidence. The Department shall first present evidence, which they did. And they be subject to questioning by all Parties and the Commission.

Mr. Dahilig: Right.

Mr. Chun: So the Commission has asked questions, and we are a party.

1-6-2 specifically states, the Planning Department, admitted interveners, and the petitioner shall in every case be parties to such proceedings. We are a party.

Mr. Dahilig: I guess the concern I have here, Mr. Chun, is that if the Department is going to be questioned and a request for an evidentiary hearing is then made by your...by you on behalf of your clients that any questions that may be brought up on behalf of the Department...I mean by the Department...needs to be handled as if the...I guess the Department's representatives in this particular case, (1) are not being questioned under oath and (2) if they are being...if they are going to be asked to appear as witnesses down the line as part of a Contested Case hearing that those questions either be refrained from at that time or they will not be asked as part of the evidentiary portion. Because the conflict here is that if the questions are going to be pointed as such to produce a record, rather than clarify what the application is, then I would ask that the Commission at that point...if the Department feels so, then we would make the request to enter into a full Contested Case hearing at that time for this particular matter if the questions relate more to trying to produce evidence versus clarifying what the report is.

Mr. Chun: Do you want me to respond?

Mr. Dahilig: No, but that would be the Department's position.

Mr. Chun: Okay, yeah. I don't think I need to respond to the Department...I mean, unless you want me to, but all I stated was...like I said, we are in an Agency Hearing as defined by State law, as defined by your own rules, and as an Agency Hearing as defined by State law and by your own rules, the next step after presentation of the report or evidence by the Department and questioning by the Commission, the next step under Rule 1-6-11.b. is questions by the Petitioner or the Party.

Chair Anderson: You can proceed with questions to the Planner.

Mr. Chun: Thank you.

So, and I don't know whether Kaaina...and I'm...this is just preliminary questions...Kaaina, would you want to be the one to question or should I...or you can say when Marisa can answer that and you can pass it off if you want to, but should I address you first or address Marisa first?

Mr. Hull: In this particular case, you can just address me.

Mr. Chun: Okay. Kaaina, so going down to your initial report, you stated that as far as the evaluation of a compatibility with the neighborhood, is it correct that as far as you're concerned



with this particular application, Mohala, you have found that it was compatible with the general neighborhood?

Mr. Hull: No, I wouldn't say that.

Mr. Chun: Okay. Let's take a step back. So in general, this is a Use Permit correct?

Mr. Hull: Correct.

Mr. Chun: And under the Use Permit, the criteria for the Use Permit is, and I quote, "the establishment, maintenance, or operation of the activity or use in the particular case is a compatible use and is not detrimental to the health, safety, peace, morals, comfort, and general neighborhood welfare of persons residing or working in the neighborhood of the proposed use, or detrimental or injurious to property and improvements in the neighborhood, or to the general welfare to the community and will not cause any substantial harmful environmental consequences of the land of the applicant or on other lands, and will not be inconsistent with the intent of this Chapter in the General Plan." Let's take that one-by-one. You are aware in the application that the Applicant has been running a bed and breakfast operation on this particular property for a number of years.

Mr. Dahilig: Madam Chair, given that question, this is based on asking the Deputy Director's personal knowledge concerning this application, I would request at this time that the Department now requests a full evidentiary hearing on this matter as to not have my Deputy Director cross-examined without oath being given. And at this time, I would make the request before the Commission orally.

Mr. Chun: I have no objection to Mr. Kaaina...Mr. Kaaina, Mr. Hull...being placed under oath; I have no objection to that.

Mr. Dahilig: However, this is no longer presentation of evidence; this is a cross-examination of the evidence. And at this time, because of the manner in which these questions are being posed to Mr. Hull, I would request and ask the Commission to deliberate on my request to move this matter to a full evidentiary hearing to be handled by a Hearings Officer.

Mr. Chun: We would object to that, Madam Chair. I mean, I can go into detail if you want.

Chair Anderson: Yes, if you can go into further details regarding your...

Mr. Chun: Okay. Let's (inaudible). As the Commission would recall when this...when this report was first presented to the Commission about two (2) weeks ago. If the Commission recalls, I came on and on the record I indicated to the Commission, and the Department at that time, in public, that it was my belief that this is a Contested Case; at least for all of the reports that were recommending denial. So I came on the record, I informed the Department specifically and the Commission, that it was my position on behalf of my clients that it was a Contested Case. That's all I need to do. I mean, because all you did was receive the report for the record. One (1) week ago, one (1) week ago, on Monday, last week Monday, I called the Planning



Department up and I asked them specifically, what attorney are you going to have to assist you because this is a Contested Case. I was told that they didn't have one and for me to contact the County Attorney's office; I promptly did so. I contacted the County Attorney's office. I specifically said hey, last week I told the Department and the Commission that this was a Contested Case. This week I'm saying I want to sit down with you guys and I want to work out the details of how we're going to handle that because I don't want to have a delay. I don't want to be in a situation of another one where people are arguing what the procedure was going to be, and I asked that one (1) week ago. The reply I got from the County Attorney's office was I'll get back to you, that's a good idea. I didn't hear from them Tuesday, Wednesday, Thursday, and Friday. Monday afternoon at 4:25 p.m., I get a message on my phone, while I was working on something else, I couldn't get it, I couldn't... I had a meeting, from the Department saying hey I heard you guys want a Contested Case, let me know what you want to do; obviously that's too late. My clients spent considerable time and money in that one (1) week because we didn't know what was going on and we couldn't prepare, so we took considerable amount of time and money getting our case ready to prepare for what the Department was going to do. My clients took considerable time and money getting people they know to testify. My clients spent considerable time and money to get a video, so that they can show the Commission what's going on. We came today prepared for an Agency Hearing as the rules require, as the rules allow, as the rule... as the law sets forth because any delay is going to hurt and be detrimental to my clients. And not only that, I would object for further continuance because the Department already now has read it's evidence in front of the Commission, answered questions from the Commission, and so now the Department is one-leg up on the applicants because they have the evidence. Now you're asking, oh yeah I can listen to the evidence from the Department, but I can't listen to your evidence and I can't ask you questions because I'm going to have a Hearings Officer; I'm going to have somebody else do that. I think that's highly prejudicial to my clients, highly prejudicial to the fairness of the procedure, and I would object to that. That's the details of my objection.

Chair Anderson: Thank you.

Mr. Dahilig: Can I respond, Madam Chair?

Chair Anderson: Go ahead.

Mr. Dahilig: You know, we try to work out... and when you look at the majority of applications that come before this body, they're handled in a pretty non-adversarial manner that is meant to be informal in nature. And Mr. Chun is well-aware of this courtesy; he's well aware of the fact that these are Contested Case hearings by law, but in terms of the procedures that we use, many times when you look before this body, they are not handled in a formal manner. They're handled informally. He's well aware of that, he's had many years of practice before this Planning Commission and he understands that at the end of the day, we're here to try to accommodate process. Now, it was Mr. Chun that made the assertions at the meeting two (2) weeks ago that he would like to reserve his right to move forward with a Contested Case hearing. He made those assertions during the setting of these hearings at the time. So, we are simply reacting to his desire to say, oh I may want to do this or I may not. So that is really the equity issue that if you are being asked to rule on something from an equitable standpoint, as Mr. Chun is stating in his objection to my request, that our Department is left in the situation where who's on first? I may

request a Contested Case hearing, I may do this, and he used the words "Contested Case hearing", but it's very cute to try to use the words "Contested Case hearing" and then say well this is what it is. No, we were well aware of the Commissioners' desire that anytime you enter into a formal evidentiary hearing that this is something the Commission is sensitive to and does not want to have handled on the floor; would like to be handled by a Hearings Officer. You know, I care not to talk about the sidebars that Mr. Chun and I had before this meeting to try to work this out because I believe that that would just lead into a he said, she said type of situation and it's not worth the Commission's time to get into that. But what is fair here for the Commissioners and why we are requesting this is that as you're seeing from the line of questioning from Mr. Chun that he is wanting to get into what is essentially a cross-examination under oath type of surgical questioning of each of my Staff members concerning and trying to pull evidence into the record. And we are not prepared for that, Madam Chair, we are not prepared for that. So he's well aware of this and that's why we make our motion...our request for a motion because we would...from a standpoint of being able to be prepared for these types of questioning, we need to be prepared with counsel, we need to be prepared with being able to understand who is on the witness list and who's not on the witness list, and we, from a standpoint of what is there and what is not essentially, need to sort that out through a full evidentiary process that should be handled by a Hearings Officer; not on the floor, not on the fly. And again, this is in response to Mr. Chun's assertions and reservations at the June 9<sup>th</sup> meeting saying that I may request a Contested Case hearing. So that's what prompted this situation, Madam Chair. So again, we would ask that the Commission hear our request for a motion to essentially handle this matter through a formal evidentiary hearing and refer the matter to a Hearings Officer.

Mr. Chun: Procedure, I'd also like to raise objection. That's not a...that request for a deferral and the request for a Hearings Officer is not on the agenda, and would also violate the Sunshine Law.

Chair Anderson: Okay, so in terms of our being able to handle the agenda as posted, there are the Agency Hearings, we have taken public testimony on the multiple homestay applications. This is the first one in which it was scheduled to take action; however, given the need to pursue a formal evidentiary hearing, what I would like to do is to take counsel with...our Commission counsel to refer to the rules and in doing so I would request if the Commission would support going into executive session. I believe we would need two (2) Commissioners to support that, to go into the same.

Mr. Abrams: I would make that motion to go into executive session to discuss this matter.

Chair Anderson: Okay.

Ms. Mendonca: I second.

Chair Anderson: Alright, all those in favor? (Unanimous voice vote) Okay, thank you. Motion carries 6:0.

If I could please have the County Attorney read the rules to the executive session.

Deputy County Attorney Jodi Higuchi-Sayegusa: The Commission may go into executive session on an agenda item for one of the permitted purposes listed in 92-5(a) HRS, without noticing the executive session on the agenda where the executive session was not anticipated in advance. HRS Section 92-7(a). The executive session may only be held, however, upon an affirmative vote of two-thirds of the members present, which must also be the majority of the members to which the board is entitled. HRS Section 92-4. The reason for holding the executive session shall be publicly announced.

Chair Anderson: So if I can have the parties and the public to please exit. We'll break into executive session.

The Commission moved into executive session at 11:47 a.m.  
The Commission reconvened at 2:10 p.m.

Chair Anderson: Call this meeting back to order.

Okay. Where we left off, we were in the Class IV Zoning Permit Z-IV-2015-15. The Department had given the Director's Report and preliminary recommendations. Then the...there was opposition from the Applicant with respect to the Department's request to go into a formal Contested Case hearing. At which point we did...the Commission went into executive session to consult with our County Attorney and at this time, I'd like the County Attorney for the Commission to go ahead and set forth the different options for the Commission. And also we can hear back from each of the parties with respect to their preferences (inaudible).

Ms. Higuchi-Sayegusa: So the...I guess the purpose of Contested Case proceedings pursuant to Chapter 91 is to allow for, you know, the legal rights of those affected by an agency's decision...to protect those rights by means of an organized and a process where both parties have a means to present evidence, call witnesses, and to be able to respond to questioning and cross-examining in an organized fashion and pursuant to HRS 91. So, it is to protect the due process rights of the parties. I think there's several options at this point, being that there is an outstanding request by the Department to set it for a Contested Case hearing, and so that is under the rules, too, for the Commission to refer it to a Hearings Officer, so the Hearings Officer can communicate with the parties, have a pre-hearing conference to set the scheduling...the schedule, and kind of handle the evidentiary portion of the proceeding and make a recommendation to the Commission. The other option is for the Commission to conduct the Contested Case themselves. That could be either done today, you know, or we set it for a date that works out for both parties. It doesn't have to be exactly on a Commission day, it could be a date that could work out for all the parties. Obviously, today there's a number of items on the agenda, and so while in an ideal world we could start that process today, it's going to be very onerous to do so. It is within the Chair's discretion to control how proceedings are going to be handled, so that's something for you to consider. Also, the other option is for there to be a waiver of the Contested Case and we could proceed with decision making today based on the application, the public testimony, and...that was presented before the Commission today. (Inaudible) Director's Report, I'm sorry.

Chair Anderson: Okay, if I can have a response from the Department, as well as the Applicant.



County Attorney Mauna Kea Trask: Aloha. For the record, Mauna Kea Trask, County Attorney on behalf of the Planning Department. Thank you for this opportunity to address you today, honorable Commission members. The Planning Department did not have counsel representation up until this point, which is their right. We appreciate the options being proffered today. I think my Client's general position is that the Planning Commission has favored over time informal processes that are more accessible to the public, people are familiar with, irrespective to the fact that it may not be formal agency procedures.

So if you look at what happened in this case, I would argue that that's what happened. Because there was no formal request for Contested Case, although it was posted for Agency Hearing, it is common practice, and everyone's familiar with it, again Mr. Chun is familiar with it, that since the 70's and prior, if there was no formal request for Contested Case, Agency Hearing procedures would generally follow informally public hearing procedures. We saw that today. The order of the public hearing and public hearing procedures under Chapter 5, Staff findings are presented first, questions of the Staff findings are provided by the Commissioners, public hearing to the public, etc. If you look at Agency Hearings, what this is agendaed as, first off primarily under 1-6-1(a), which states in all Agency Hearings before the Commission, the Chair or one (1) of the Commissioners or Hearings Officer duly appointed and designated shall preside at the hearing; that wasn't done in this case because of previous practice. So therefore, because there is no formal designated Hearings Officer, there is no one really to control the course of the hearings, administer oaths, receive evidence, hold appropriate conferences, etc., as provided by 1-6-1(b). Under the hearing procedures, that wasn't followed either, under 1-6-11. To my knowledge, I wasn't here, but I don't know if there was any formal entertaining of request for intervention; I can't make that representation before you. Presentation of evidence, in that case the Department shall first present evidence and shall be subject to questioning by all Parties. The Petitioner may then make a presentation and subject to questioning; none of these procedures were followed. Then public testimony is to be occurred. My understanding is that public testimony was otherwise addressed in this case, etc. So I would agree, we really are dealing with the due process issue and due process procedures. Due process protects not only the Department and the County, but also the applicants, also the public, also yourselves, as far as order decorum and all those important matters go. In this case, we have spoken with counsel for the various applicants and/or petitioners, in this case, and we both agree to set these matters for hearing dates further down the road at a date certain. We do not currently agree as to whether or not the Commission, or Hearings Officer, or even in fact the Chair or designated Commissioner hear this matter. My client would like a Hearings Officer; I'm going to maintain that request. So that's our position today, we would ask to effectively continue these things at a date certain. We would request that they not be provided for on Planning Commission dates, or on Planning Commission dates that are light. And we would...I would reiterate our request for a Hearings Officer to be appointed. Thank you.

Chair Anderson: Okay. If I can hear from the Applicant.

Mr. Chun: Sure. Good Afternoon. Jonathan Chun. First, I would like to apologize not having my coat here today. I know it makes a big difference on my appearance, but it was a bit hot today, so I forgot to put it on again.



First of all, since we're talking in general on how we want to proceed for the afternoon, let me make it clear, as far as the applicants who I represent who have received recommendations for approval from the Department, and that's Mr. Knopf...Mr. and Mrs. Knopf, Mr. and Mrs. Chong, and Ms. Pignoli, I believe those three (3) applications that are on the agenda today are for recommendations for approval. Those ones we are not insisting on a Contested Case, okay? And that the public hearing procedure as to Chapter, I believe 2, would be proper because at that point in time since there is no adversarial conflicting positions, between the Department and the other party which is the Applicant, there is no Contested Case by definition under Chapter 91; that's our understanding. So we're willing to say, as far as those three (3) are concerned, that's...we're willing to stipulate to those or to waive any objection as to that.

As far as the other applicants that are here that I represent and that the Department has recommended approval (sic) in which I believe all of you have their recommended report and proposed report, it is our position that it is a Chapter 91 hearing, it is an Agency Hearing under Chapter 6, it is a Contested Case under Chapter 91. The next question is, how to proceed from there. I would definitely agree...and Mr. Trask and I agree that there is no way, even if we do have the hearings today that we're going to get through all ten (10), I believe, of the contested ones. So yes, we definitely agree on that. If we do have one, I agree that we probably should just say okay we're going to do, at best, one (1), at best; maybe two (2), maybe two (2). So there is an agreement as to that and for the rest that we don't...can't take care of, we should set for a hearing at a later time; and I'm willing to work with the Department as to what the hearing date is.

Where the dispute really...disagreement lies are two (2) factors, and I'll let the Commission know what the two (2) factors are...the two (2) issues. The two (2) issues are this: one is, is it in front of a Hearings Officer or in front of the Commission? It is our position, my applicants and my clients, is that it should be in front of the Commission. And this is the reason, the Department has already given you, at least for this one, an oral report. They also have given you, and you have in your agenda and have it in your files already and I'm sure all of you have read it, their recommended report or their report with recommending denial; it's there, you've read it, it's in the record. The problem that we have of having it now...having a Hearings Officer is now you're basically...after reading one side's position and getting to be aware of that side's position, you're saying to the other side, you can tell somebody else and I'll hear about it later on, second-hand from somebody else who I want to appoint. We believe that gives a really unfair advantage to the side that didn't get to present directly to the Commission. It's like a judge telling the plaintiff, I'll hear your case, but defendant, you can tell somebody else and I'll read about it later on, and don't...trust me I'll make a good decision. Sometimes I will trust him, but it leaves an unfair advantage to a party who doesn't get to be face-to-face with the guys that's going to decide their fate and have you, members of the Commission, be able to face-to-face tell our sides, I have questions for you. How are you doing this? How are you going to do that? You don't get to do that, so we're hampered. "We" meaning the applicants are hampered by a situation where one side gets to be fully accessed to the Commission, the other side has very limited access, and the other side from the Commission's point of view, you have no opportunity or very limited opportunity to ask questions you might rationally have. And you're limited by

whatever filter that the Hearings Officer wants you to filter through. We believe that's inherently unfair.

Now the second point, and that has to do with a...is the continuance. We have no problem saying a...because yes, we are not going to be able to finish today, all ten (10) of them; that's a given, no dispute on that. What our issue is, and I brought this up earlier, is that our clients, all of them, came today ready and prepared to present their case and their arguments to this Commission. And the reason why...because you're talking about their livelihood, all of them, I believe, in their application represent...they've been operating ten (10), fifteen (15), twenty (20) years. This is not a new thing on their minds; they've been operating. And all of them in good faith because...either because they read the paper or I think several of them got...actually got letters, but some of them didn't get letters, and in good faith said we'll shutdown; we'll stop, we're going to do it the right way, what you want us to do, and apply for a permit. Then now, when we come prepared to tell our story, to tell our position, to disagree with the Department's recommendation, present evidence in front of the Commission to do that, the Department says we're not ready to do it yet, and we want a continuance for another day. In the meantime, my clients whose sole...some of them are their sole livelihood...can't make a living. And for some of the ag ones, because they can't make a living, they can't continue their ag. Who's going to pay the expenses? I believe that's unfair and that's something for the Commission to decide, but I think that's unfair because in essence, a continuance, a long-term continuance, basically tells them you're done. There is no way that they can handle that, to equalize that. And to put less pressure on the Commission is...I suggest that the Department, not the Commission, but the Department agree that during this time period, whatever it may be where we can work it out and I promise I will try to work it out as soon as we can in terms of the day, that they not be penalized; no cease and desist orders, no fines, no being sent to the prosecutor's office to be criminally prosecuted. That this act, or any action they take between now and whenever the Commission decides our actions are part of their compliance plan as they did last time because this is not...I'm not suggesting something unusual. It is something that the Commission and the Department has done in the past. And I'm just asking for fairness that for my clients who are willing to come today and present their case, but because of obvious reason they can't, that they be given that same consideration. I tried to get an agreement as to that, but the Department...they won't agree, so I'm just throwing it to the Commission, that's our position. If the Commission understands that that's why we're saying these things. In the absence of an agreement, we will have to insist that we will go through our Agency Hearings today and we will object to a Hearings Officer and (inaudible). I'm not...I'm being very clear because...and I said this to Mr. Trask and you know, I don't think he'll object to me saying, but I said you know, you got to remember what we're doing here is we're protecting my clients' rights and what we're doing...and is very clear as some of you who know me...we're building the record, so this is the record. We're not waiving anything, we're insisting on our rights. If you want us to waive our rights, those are the conditions that we'll waive certain rights.

Chair Anderson: Thank you. Does the Department want to comment on the objections as noted?

Mr. Trask: Yes. Again for the record, Mauna Kea Trask. Regarding the fairness and the arguments of fairness, it goes both ways. All the applicants today had an attorney there present to represent them. Planning Department did not. Planning Department shall be made a party in

all these proceedings. Because of a long, generally understood tradition of local-style, I guess. And Mr. Chun knows it. He was the first Deputy County Attorney. He's aware of these proceedings. So if it's a fairness issue, we have no objection or we would find it even appropriate for a motion for reconsideration to reopen the Agency Hearings so as to provide...remove any doubt as to Mr. Chun's ability to continue to advocate and lay his record, and just like he says. And also to provide the Planning Department with their attorney representation. Obviously, as per the past practice, there has been no formal request for Contested Case, so Planning Department has not met with any Deputy County Attorneys on these matters. They have been afforded no representation. The Commission's...I mean the Planning Department's report was read, their findings, but that is not...I would argue that that's not necessarily evidence at all. You know, that's what they presented, that's what they read under the public agency hearing informal process, as everyone is familiar with; you yourselves are familiar with that when there's no formal request for Contested Case. We're not trying to be unreasonable here. We do agree that due process is important. We agree that...I mean, the County of Kaua'i is comprised of all the people in this community. It's a corporate body politic and they are ensured rights of due process and we want to protect those; we're fine with that.

As far as Hearings Officer, given the motion for recon to reopen the Agency Hearing, we don't think that would be a problem at all. Now, we understand that Hearings Officers...we disagree that they're inherently unreliable or anything else. They would screen things inappropriately (sic). You know, you're going to have the record. This Planning Commission has done it numerous times before. We would maintain that position.

And finally, my understanding was...and my client would not agree to allowing for continued illegal use of property, so we cannot agree to that and I'll just rest it at that. I don't want to become emotional about it, I don't want to talk any further about it, that's just our position for the record.

Chair Anderson: Thank you.

Mr. Trask: Finally, just one more thing, and as far as proceeding today with ten (10) hearings, we would move...if this motion is denied or if this is not continued today to a date certain, we would move to continue under agency rule 1-6-3, as for given this change of cultural approach to these matters in front of this Commission, what this County is used to for the past 40+ years, we think that's sufficient good cause to nonetheless continue it anyway, irrespective to the fact of who you decide will hear it. That's all, thank you.

Chair Anderson: Okay. So for the Commission, we have an agenda today with...as pointed out by the Applicant, various paths and options noting that the Knopf, Chong, and Pignoli applications...the Attorney and representative for the applicants has not insisted on proceeding with Contested Case on these matters.

Mr. Trask: Sorry, Madam Chair, I did forget one (1) thing. On that, the Department would not object to proceeding with those applications that they recommended approval today, as stated by Mr. Chun. Thank you.



Chair Anderson: Okay. And then...also noting that those particular applications that the Applicant waives the right to the full Contested Case and their due process rights.

Mr. Chun: Chong...for Chong, Pignoli, and Knopf.

Chair Anderson: Okay. And so that leaves us with the other applications set forth that there were recommendations where there is an adversarial interest between the Department and the Applicant. As stated by our attorney for the Commission, there are options for the Commission. My opinion in terms of being the Chair and the officer, presiding officer, is that we need to be able to come up with a schedule that will (1) fit the needs of the applicants, the parties, as well as the scheduling realities for all of the Commissioners. And so I wanted to see if we have a motion from the Commission in terms of moving forward with respect to continuing the Agency Hearing as Contested Case in the adversarial matters, and that would be New Agency Hearing that's listed as 2.b., 2.c., d., e., or not e., f...

Ms. Higuchi-Sayegusa: Not f.

Chair Anderson: h., i., and...

Mr. Abrams: h we already continued.

Chair Anderson: Sorry about that, clarification. We've moved things around a few times today.

So to clarify, that it's not the continuation of the Agency Hearing, but it's the setting of the Contested Case hearing, so that we can afford all the parties their full due process rights. So that would be an evidentiary hearing and so just to clarify, if I can have Counsel just read those agenda items. I don't want to misstate it.

Ms. Higuchi-Sayegusa: And that's items 2.b., 2.c., 2.d., 2.i., 2.j., 2.k., and 2.l.

Mr. Abrams: Madam Chair, h is the one that was continued; that's the denial on ag and that was only because of the reason that the Applicant wasn't here. So are you going to contest that one or not? Because all the others that were heading in that direction.

Mr. Chun: Do you want me to answer that one, Madam Chair?

Chair Anderson: Yes, please.

Mr. Chun: For that one, that was Ms. Ruddell's one. Ms. Ruddell's one was continued by agreement between the Department and Ms. Ruddell to August...the August hearing...August 9<sup>th</sup>?

Chair Anderson: The second August hearing.

Mr. Chun: Yeah, August...the second...was it the first meeting?



Chair Anderson: Second.

Mr. Chun: Second meeting in August, yeah. At that point in time, I have not talked to Ms. Ruddell in terms of what her position is yet, so I don't know what her position would be on the second meeting in August, so I can't answer that. All I know is that it is continued and we have no problem with continuing that and continuing the status quo from her application.

Mr. Abrams: So that may end up being a Contested Case, right?

Mr. Chun: It might be. I don't know what her position will be when she gets back. I know at one point in time before she left, she was discussing with the Department about submitting additional material for the Department to consider, but I don't know the status of that.

Mr. Trask: And the Department's position would be, given the posture that similar cases have taken regarding if it's an agency procedure, then it is a Contested Case hearing. And to avoid this type of event occurring at the second meeting in August, for the record we would request, the Department would request, it go to formal Agency Contested Case proceedings, so as we can just prepare.

Chair Anderson: Okay, so as we work through...and perhaps if the Commission, if we can raise a point, if you have questions to our attorney, to ask those questions, so that we can formulate an appropriate motion at this time.

Mr. Abrams: Madam Chair, so how are you proposing we handle it? Or h, excuse me. Would we be putting it in with all the other ones that...?

Ms. Higuchi-Sayegusa: I mean, I think we've already continued it when we reached that matter, but you know, so it's already continued to some date in August, so perhaps...

Mr. Abrams: Yeah, but it's not scheduled as a Contested Case, right? Because we never got to that.

Ms. Higuchi-Sayegusa: It was continued Agency Hearing.

Chair Anderson: But we're interpreting the Agency Hearing as a Contested Case.

Mr. Abrams: Okay, alright, so that would then go in with all the others.

Chair Anderson: Yeah.

Ms. Higuchi-Sayegusa: Yeah, that's fine.

Chair Anderson: And for the Commission to consider as well, there is the objection to deferring the 2.a. specifically to a Hearings Officer at this time, but it may be appropriate to include the specification of whether or not the matters will be...or moved upon will be deferred to...or referred to a Hearings Officer as well. So things to consider.

Mr. Keawe: Was that 2.a. you said?

Chair Anderson: Sorry, 2.b., 2.b., yeah.

Mr. Keawe: Alright.

Chair Anderson: Okay, does the Commission have a motion?

Mr. Katayama: Madam Chair, just a question for our Attorney. Are there any time issues on taking action on any of these items?

Ms. Higuchi-Sayegusa: Well, once it is set for a Contested Case then the Chapter 91 procedures come into place, and so the time...the timelines required by the CZO is told. So once it is referred either to a Hearings Officer or we are setting it for a Contested Case then you know, we go through the full process of the Contested Case procedures through taking up evidence, which may or may not take a couple days. And then you have to allow for...I believe it is...we take public...we can take public testimonies after the evidence is presented. I think its thirty (30) days after the close of the Contested Case hearing submission of Findings of Fact, Conclusions of Law by both parties and then setting it for decision making by this body. So there's...it's a procedure, but it's not...the timelines required by the CZO is told.

Mr. Hull: If I also might interject, Commissioner. In the event that it doesn't go to Contested Case hearing, because the Department tracks all the applications for procedural matters, all of these applications' last day for action, if they don't go into Contested Case, is the July 28<sup>th</sup> Planning Commission meeting.

Mr. Katayama: So for agenda items F.2.e, f., and g., it's the July 28<sup>th</sup> date? Action item.

Mr. Hull: Excuse me. For every single New Agency Hearing application listed, the action date per the Comprehensive Zoning Ordinance parameters is July 28<sup>th</sup>, as far as the scheduled Planning Commission meeting.

Mr. Katayama: Thank you.

Mr. Chun: Madam Chair, I don't disagree with Mr. Hull, but that's one reason why I mentioned those things, and if we can make an agreement then we don't need to address the issues of whether or not there's a time period or not. And if the...and I agree with Mr. Hull that that's what the Class IV Zoning Permit time limitation is July sometime. If the Department is willing to do that before July, I think my clients would be open to that. We're more than happy to discuss the scheduling of that to avoid any kind of problems with the July deadline. But there is...yeah, under what Mr. Hull said, there is a deadline under Class IV Zoning. And I don't want to go down that road if we can avoid that.

Chair Anderson: Okay.